Supreme Court, U.S.
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No.

IN THE

# Supreme Court of the United States

NICOLAS S. LAURENT
AS GUARDIAN FOR FOUR,
MINOR CHILDREN, et, al.,

Petitioners,

v.

NANCY N. HERKERT, TRUSTEE,
BANK ATLANTIC FEDERAL SAVING BANK
JOANNE M. CHIN, VICE PRESIDENT FOR
BANK ATLANTIC FSB # 810
HUGO A. MARTINEZ
STEPHEN N. ROSENTHAL
ELSA C. MACHADO, PROPERTY TAX
COLLECTOR
RACHEL BAUM, FINANCE DIRECTTOR
BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY
MIAMI-DADE COUNTY PROPERTY TAX
COLLECTOR

Respondents,

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR ELEVENTH CIRCUIT**

## PETITION FOR WRIT OF CERTIORARI

NICOLAS S. LAURENT
P. O. BOX 260 189
BOSTON, MA 02126
TEL: (617) 894-9774
PRO SE / ATTORNEY

## QUESTION PRESENTED

1. Whether United States Court of Appeals for Eleventh Circuit can make a Judgment against Petitioner- plaintiff, Nicolas S. Laurent by insert three wrong individual defendants- Appellees names; **United States Trustee, Hugo Maritnez, Steven N. Rosenthal** in the order deny Petition for Rehearing, on September 29, 2006, and affirmed, on July 14, 2006, which are not a party, in the Notice of Appeal filed, on July 12, 2006, neither, in the First Amended Complaint filed on April 15, 2005, in the United States District Court Southern District of Florida.

2. Whether Bank Atlantic FSB # 810, creditor inside the chapter 13 payment plan, can made fraudulent transfer, and concealment, without relief from automatic stay, to used Petitioner- plaintiff's property tax certificates, paid inside the chapter 13 payment plan, to made second foreclosure, in the Guardian property home on November 13, 2002, when petitioner's Bankruptcy chapter 13 payment plan was fully active and effect.

## PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

Petitioner - Plaintiff (s) are Nicolas S. Laurent and the four Children, J. S. L, A. S. L., N. S. L., B. S. L,
Respondent –Appellee (s) are Nancy N. Herkert, trustee
Joanne M. Chin, Vice President for Bank Atlantic Federal Saving Bank # 810, Bank Atlantic Federal Saving Bank
Hugo A. Martinez
Stephen N. Rosenthal
Elsa C. Machado, Property Tax Collector
Rachel Baum, Finance Director
Board of County Commissioners Miami- Dade County
Miami - Dade County Property Tax Collector.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner, Nicolas S. Laurent on behalf of the children respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals in this case.

## OPINIONS BELOW:

The Opinion of the Court of Appeals Pet. App. 1a.-8a.} is not reported, and the court subsequently deny a Petition for Rehearing, See Pet. App. 9a-10a.

## JURISDICTION

The judgment of the Court of Appeals was entered on July 14, 2006, Petitions for Rehearing were denied on September 29, 2006. **Pet. App. 9a-10a.**
On January 31, 2007, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including March 31, 2007. The Jurisdiction of this court is invoked under **28 U. S. C. §1253.**

## STATUTORY PROVISIONS INVOLVED.

XIV Amendment Section 1." that all person born or naturalized in the United States of America, and subject to the jurisdiction thereof are citizen of the United States, and of the state, wherein they resided. No States shall make, or enforce any law which shall abridge the privileges or immunities of the United States, nor shall any states deprive any person of life, Liberty, or property, without due process of the law, Nor deny to any person within the jurisdiction the equal protection of law.

## STATEMENT OF THE CASE

Petitioner - Nicolas S. Laurent filed this Petition for Writ of Certiorari to Supreme Court of the United States to review, vacate, and reverse the order deny Petition for

Rehearing filed on September 29, 2006, and affirmed, on July 14, 2006, render in the Court of Appeals.

Petitioner Laurent filed Notice of Appeal, on January 12, 2006, in the District Court Southern District of Florida, to Court of Appeals to reviewed the clerical mistakes made in the Final dismissal case closed, render on December 20, 2005.

On March 6, 2006, Petitioner Laurent filed Initial Brief accompanied with Record Excerpts, in the Court of Appeals, and sent a copy by certified mail, to each of the individual defendant (s).

Court of Appeals failed to allowed Petitioner -Laurent to prosecute by return all the reply brief, unfilled, which comply with Federal Rules of Civil Procedure.

Rules 5(e) of the Federal Rules of Civil procedure indicate the court should accept for filing any paper presented for that purpose. For example on April 17, 2006, to April 24, 2006, Court of Appeals failed to filed Petitioner's Reply brief submit timely, which comply with Federal Rules of Civil Procedure.

Thereafter on July 14, 2006, Court of Appeals erred Affirmed the U.S. District Court order, enter on December 20, 2005, in the wrong document, because United States Trustee, Hugo Maritnez, and Steven N. Rosenthal are **not** included, as Defendant, in the First Amended Complaint filed on April 15, 2005. app.11b-14b.

**A. Petitioner complying with Federal Rules of Civil procedure to obtain permission to bring this litigation:**

Court of Appeals erred in the opinion, since Petitioner comply with Rules 8(a), 9(b), obtained permission in the Bankruptcy Court, to bring this litigation upon Ms. Nancy N. Herkert, and the other Respondent(s).

**On July 30, 2004,** Petitioner Laurent filed Motion for Leave timely, requested permission in the Bankruptcy Court Chapter 13, to bring this action, against Ms.-

Nancy N. Herkert, for fraudulent transfer and concealment made in Petitioner Laurent Chapter 3 payment plan.

Respondent (s) failed to abide by Judge Paul G. Hyman Jr., order on December 5, 2002, to return the unapproved pre-payment of Petitioner's Guardian home property taxes, back into the bankruptcy chapter 13 plan to continue, the payment plan, in the normal course, for the property described as:

**Lot 15, Block 4 of HIGHVIEW GARDENS Section "A" according to the Plat thereof recorded in Plat Book 45 page 29, of the Public Records of Dade County Florida. And**

**The North of 5 Feet of Lot 1, Block 4 of HIGHVIEW GARDENS, according to the Plat Thereof recorded in Plat Book 45 at page 22 of the Public Record of Dade County, Florida, Folio Number: 30 – 2123 – 010 -0140.**

On August 17, 2004, the bankruptcy court Granted Petitioner Laurent permission and Motion for Leave to bring this action against Nancy N. Herkert, chapter 13 trustee, and the other Respondent - Appellees, to the United States District Court. **Pet. app.** 22c.

On September 30, 2004, Petitioner filed Initial Brief, accompanied with a complaint, in the District Court approved by Judge Cooke, case #: 04-22471- CIV, and 04-22076-CIV.

**On March 9, 2005**, Order of Recuses of Judge Marcia G. Cooke from Petitioner Laurent's Complaint case Number: 04-22471-CIV- in the District Court; Pet. App. 24c. On March 15, 2005, order of Recuses Judge Joan Lenard from Petitioner Laurent's complaint case in the District Court Southern District of Florida.

This case assigned to Judge Adalberto Jordan., on March 15, 2005.

Thereafter, on March 22, 2005, District Court Judge Jordan dismissed Petitioner's complaint, without prejudice indicated for violation of Rule 8 (a)., and Granted Petitioner Leave to filed the First Amended Complaint -

due on April 15,. 2005, which Petitioner Laurent comply with the court order, to filed the Complaint.

**B. Court of Appeals err made clerical mistake in the ruling filed on September 29, 2006, and July 14, 2006.**

On April 15, 2005, Petitioner- Laurent filed First Amended Complaint in the District Court, and **deleted** two (2) Defendant names, United States Trustee, and Storm Water Miami- Dade County, Florida, and remove the children full name, to insert the children's Initial.

District Court entered the Final order of Dismissal, case closed, on December 20, 2005, in the wrong document, because Petitioner, Laurent's Fist Amended Complaint didn't obtain United States Trustee as a party.

Court of Appeals insert three wrong individual stranger, as defendant, in the order affirmed the District Court order, on July 14, 2006 and deny Petition for Rehearing on September 29, 2006. See pgs 3.]

Petitioner, Nicolas S. Laurent's First Amended Complaint is short, precise, and to the point, comply with Rules 8(a) and 9(b), states claim, in which relief can be granted, detail, plead fraud in the factum, fraud in the inducement, intrinsic fraud, and fraudulent transfer, with particularity, in the First Amended Complaint filed on April 15, 2005.

First Amended Complaint provides more definite statement, to each, and every individual defendants.

**On April 15, 2005,** Petitioner prays for relief, claim and judgment against each and every individual defendants, in the First amended Complaint, filed in the District Court Southern District of Florida. **App. 25c**

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[1] There is no time limit for attacking a void judgment under N.D. R. Civ.P. P 60 (b) (iv). Eggl v. Fleet guard, Inc., 1998 N. D 166, 583 N.W. 2 d 812.

District Court erred and abused its discretionary system indicated Petitioner didn't requested permission, and Motion for leave to bring this action upon Respondent- Appellee, Nancy N. Herkert, chapter 13 trustee, and the other Respondents-Appellees.

Petitioner requested and filed Motion for Leave timely, in the Bankruptcy Court, granted by Judge Paul G. Hyman, Jr., to bring this litigation, upon Respondent, Nancy N. Herkert, and the other Respondents.

District Court has jurisdiction over case arising from the U.S. Bankruptcy Court.

Judge Adalberto Jordan erred by indicated Petitioner-doesn't have subject matter jurisdiction, to file the First Amended Complaint.

Petitioner Laurent, a debtor inside the chapter 13 reorganization payment plan, comply with the term and condition, of the bankruptcy court, to made his payment inside the Chapter 13 payment plan, to paid the creditors.

Respondent, Nancy N. Herkert is private individual appointed to administrate consumer Bankruptcy Cases in chapter 13, for the Southern District of Florida, and to collect payment from debtor.

**Federal Rules 11 U. S. C. Section 323:**

(a). The chapter 13 trustee, in a case under this Title is representatives of the estate, to properly administrate the estate, but not to implicate wrong doing, and conceal violation, fraudulent transfer, in the automatic Stay, inside the Debtor's Chapter 13 payment plan. (b). the trustee in a case under this title chapter 13 can be sued.

Court of Appeals err in the opinion, filed on July 14, 2006, since Petitioner Laurent delete U. S. Trustee, as a party in the First Amended Complaint.

Court of Appeals err in the background statement made in the opinion, on page 2, indicated " Hugo A. Martinez,

a mortgagor who foreclosed on Laurent 's home."

Court of Appeals failed to acknowledge in the opinion on July 14, 2006, that Hugo A. Martinez's mortgage foreclosures are **Canceled** in the State Court Eleventh Judicial Circuit Dade County, Florida, **Case** # 00 -30948 -CA- 01,( 32 ), recorded on Harvey Ruvin Clerk BK 22494 at page 0146. Court of Appeals abused its discretion in the footnote on page 6, in the opinion filed on July 14, 2006, indicated the "Bankruptcy Court- gave the parties in the current suit an exemption from the Stay," which is incorrect.

Court of Appeals failed to justify where Bank Atlantic FSB # 810, Joanne M. Chin, and the other Respondents obtained relief from stay in the bankruptcy court, to used the Guardian home property taxes, on November 13, 2002, when petitioner's Chapter 13 was fully active and effect, in the U. S. Bankruptcy Court. App. 1a-8a .

Respondent, Stephen N. Rosenthal attorney for Hugo A. Martinez order relief in rem from stay, in the Bankruptcy Court doesn't have credibility, because Mr. Martinez include his attorney Mr. Rosenthal committed Affidavit of **Perjury,** in **fraud** in the **Factum**, **intrinsic** fraud, in the bankruptcy court with a **void** promissory Note dated March 16, 1993, which Respondent Martinez executed accompanied, with a Warranty Deed in Title Defect, with malicious intent, & delivered to Mr. Laurent on March 16, 1993.

Bankruptcy Court err failed to verify and investigated Mr. Hugo A. Martinez, and Mr. Stephen N. Rosenthal Affidavit of perjury, false representation mortgage claim. Mason Jares, Ltd v. Peterson v. Peterson, 939 P. 2d 522 (Colo. App.1997). A void Judgment may be challenge at any time pursuant to C.R.C.P. 60(b) (3), and must be vacated upon request. Rains berg v. Klein, 5P 351 (Colo. App 1999.

Courts are constituted by authority and they cannot go beyond that power delegated to them. if they act - beyond that authority, and certainly in contravention of it, their Judgments and order are regarded as nullities; They are not voidable, but simply Void, and this even prior to reversal. Court of Appeals abused its discretion indicated in the footnote, in the opinion on page 6, "the claim was wholly insubstantially, and frivolous, and properly dismissed for lacked of subject matter jurisdiction."

This matter of fraudulent relief originate in the Bankruptcy Court, since Respondent Martinez attorney Stephen N. Rosenthal is the one who went to the Bankruptcy court to committed intrinsic fraud with a Title Defect promissory note dated March 16, 1993.

Petitioner Laurent paid to Respondent, Nancy N. Herkert, inside the chapter 13 Bankruptcy Court, payment plan, total amount of **$ 78, 127 .10.**
**18.U.S.C. § 3057(a):** Any trustee having reasonable grounds for believing Bankruptcy crimes committed or that an investigation should be held in connection therewith shall report to the appropriate U. S. attorney, all the facts, and circumstances of the case, name of the witnesses, offenses believed to have committed.

On March 16, 1993, Petitioner Laurent bought a piece of commercial property, to open his office business construction, for the price of $ 88, 000. 00, dollars, from Mr. Hugo A. Martinez.

Petitioner Laurent paid Respondent, Hugo A. Martinez $ 30, 000. 00, plus $3, 000, total $ 33, 000. 00, in closing.

Consequently, when Mr. Laurent applied for permit, to repair the property; Building Zoning refused to gave the permit, indicated the property is completely abandon, out of public function, need major repaired.

Petitioner spent more than $ 45, 000. 00, to put the property in public function, lease the property, now the rent money is in Eleventh Judicial Circuit Court Registry.

Petitioner Laurent, and the children equity and interest is superior to any other parties, and to any other claims.

**On March 16, 1993,** Hugo A. Martinez executed a Title Defect Warranty Deed, in Fraud in the Factum, and delivered to Petitioner, Nicolas S. Laurent, in bad faith. Court of Appeals failed to **justify** where Mr. Hugo A. Martinez obtain a mortgage or any interest in Petitioner's Guardian home property, after June 21, 1996.

**On October 19, 1993, Mr.** Richard L. Pennington, and wife Guadalupe filed lawsuit foreclosure Title Defect to wit, in the State Court Eleventh Judicial Circuit, Miami - Florida, case # 92-24742 CA (21). **App. 27d.**

Mr. Richard L. Pennington and wife Guadalupe Pennington claimed the property described above, actually belong to them, not to Respondent, Hugo A. Martinez.

After several years of stressful litigation; finally, Nicolas S. Laurent's Title Insurance Company settled, on behalf of Mr. Laurent as a Title Insurance Policy Holder, paid money settlement, to Mr. Richard L. Pennington and wife Guadalupe, to satisfy their valid foreclosure claim as the real owner, with the right Title of the property, in the Eleventh Judicial Circuit Court, for the property described above, **App. 28d, 29d.**

As a Result, on June 21, 1996, Mr. Richard L. Pennington and wife Guadalupe, First party transfer the **Title of the property,** to Mr. Nicolas S. Laurent Second party forever, all the right Title, Interest, claim, and

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[2] A void judgment is one which from its inception, was a complete nullity, and without legal effect. Luben v. Selective Service system, 453 F. @ e 645, 649, ( 1st Cir. 1971 )

demand which the said First Party in and to the following lot described above, in the 11th Judicial Circuit Court, Dade County, Miami, Florida, Recorded on Harvey Ruvin Clerk, on September 23, 1996, **Official Record** Book # 17360, page 3294, in Dade County, Miami - Fl; Folio # 30-2123-010-0140. **Pet. App. 33d-35d.**

Respondent, Hugo A. Martinez doesn't have any mortgage, nor interest in the Guardian home property.

Petitioner's former attorney Michael J. Brooks indicated in the Chapter 13 bankruptcy Court payment plan, that Hugo A. Martinez's mortgage is invalid.

On or about October 1993, Respondent, Stephen N. Rosenthal is the attorney who represented Mr. Hugo A. Martinez in Richard L. Pennington Title Defect Lawsuit to wit Case Number described above.

Pennington's Litigation against Hugo A. Martinez et., al., cause Petitioner, Nicolas S. Laurent major deficit, for the property described above. **App. 27d.**

Court of Appeals erred in the opinion made on page 5, indicated "The District Court correctly determined that no Federal Question exist".

**Federal Question Exist**, in this case, since this matter regarding Respondent creditor Bank Atlantic FSB # 810 - Joanne M. Chin, Hugo A. Martinez's false claim originated in the U. S. Bankruptcy Court Southern District of Florida.

Bank Atlantic FSB is a creditor who received payment, every month from petitioner Laurent, inside the chapter 13 payment plan, and violate the Automatic Stay. Petitioner, Nicolas S. Laurent is a debtor inside the chapter 13 payment plan, and have jurisdiction, Personal and Federal Question jurisdiction.

Court of Appeals indicated in the opinion, on July 14, 2006, " the District Court granted Petitioner's Leave to file a Second Amended Complaint., which is incorrect.

—District Court abused its discretion, failed to granted Petitioner, Nicolas S. Laurent Leave freely, as justice requires, to file Second Amended Complaint, in the district court, and failed to made the Final dismissal ruling in the correct document; since United States Trustee, is not party in the First Amended Complaint filed in the District Court on April 15, 2005.

**On December 20, 2005,** in the Final order of Dismissal, case closed render in the United States District Court Southern District of Florida, on Page 3, Judge Adalberto Jordan **Threatened Petitioner, Nicolas S. Laurent life by indicated:**

"**I am not granting Mr. Laurent leave** to file another Amended Complaint, If Mr. Laurent wants to file another amended complaint, Mr. Laurent shall not serve any further amended complaint, on any defendant until I have allowed him to file that pleading, Mr. Laurent is placed on a **Notice** that he may subject to **sanctions,** if Mr. Laurent filed another deficiency Amended Complaint". **Pet. App.** 15b-21b.

On December 28, 2005, Petitioner, Nicolas S. Laurent filed Motion to Alter or Amend in the District Court to reconsidered and to vacated or reversed the Final Order of Dismissal, case closed, for clerical mistake, and abuse of discretion, since U. S. Trustee is not a defendant, in Petitioner's First Amended Complaint filed on 4 / 15 /2005.

On January 4, 2006, Judge Jordan denies the Motion. Thereafter, on January 12, 2006, Mr. Nicolas S. Laurent filed Notice of Appeal in the District Court to Court of Appeals to reviewed, and considered to vacated the clerical mistakes made in the Final order of Dismissal, on December 20, 2005, and on January 4, 2006.

Court of Appeals erred on page 7 by indicated "responsive pleading had been filed in Laurent action.

Respondents failed to answer Petitioner's Summon and the First Amended Complaint timely, instead filed-

Motion to Dismissed, which failed to comply, with Federal Rules, of Civil Procedure.

Two Respondent - Appellees, Bank Atlantic Federal Saving Bank, and Joanne M. Chin failed to filed or serve any answer to Petitioner - plaintiff's First Amended Complaint, as require by the statue of limitation of time.

The Summons and the First Amended Complaint served by the sheriff, indicated the Defendants had 20 days to comply with the Summons, and to answer Petitioner-plaintiff's First Amended Complaint, in which the Respondent - Appellees failed.

Petitioner Laurent signed a contract with Bank Atlantic FSB # 810, Joanne M. Chin, to received payment inside the chapter 13 payment plan. **App. 36d-39d.**

Petitioner Laurent seeks a default Judgment against the Respondent- Appellee, Joanne M. Chin, Vice President for Bank Atlantic FSB # 810, for failure to answer the Summon, and the First Amended Complaint.

Court of Appeals for Eleventh Circuit abused its discretionary by indicated in the opinion. on Page 7, ''that the District Court not required to give Petitioner's Pro Se a second chance to filed Second Amended Complaint.'' "Therefore Laurent was required by rules 15 (a) to obtain leave from the district Court, before filing a second Amended Complaint."

Federal Rules 15 (a) authorize a court to grant leave freely, when Justice so require. Leave to amend are frequently granted by the court, unless there is bias, prejudice, in the court, toward Petitioner, Nicolas S. Laurent. Petitioner Laurent comply with Rules 9 (b), in First Amended Complaint, filed on April 15, 2005.

Court of Appeals erred by using the word tort, which doesn't applied to Petitioner, Nicolas S. Laurent, since Petitioner and the children are the rightful owner, of the Guardian home property, not Respondent, Hugo A.

Martinez, and Mr. Stephen N. Rosenthal.

On June 24, 2005, Return of Service executed for the Summon, for Bank Atlantic FSB, answers due, on July 5, 2005; Respondent- Appellee, Bank Atlantic FSB, failed to serves and filed any answer to the Summons, and to the First Amended Complaint, **due** on July 5, 2005.

On July 12, 2005, Petitioner- Plaintiff filed Motion for Entry of Default, and Affidavit against Bank Atlantic FSB, for failure to filed or serves any answer to the Summons, and to the First Amended Complaint, due on July 5, 2005.

On August 1, 2005, Return of Service Summon executed for Joanne M. Chin, answer due on August 15, 2005. Therefore, on August 19, 2005, Petitioner - plaintiff filed Motion for Entry of Default, and Affidavit against Bank Atlantic FSB # 810, Joanne M. Chin, for failure to filed or serves any answer to the Summons, and to the First Amended Complaint due on August 15, 2005.

On August 22, 2005, Clerk of Court in the District Court enters a **Default** against Joanne M. Chin, Vice President for Bank Atlantic FSB # 810, for failure to filed, and served any answer to the First Amended Complaint, in the District Court. **Pet. app.** 40d.

Respondent, Bank Atlantic FSB # 810, and Respondent, Joanne M. Chin recognized they are in default, waived its right, when they failed to answer or appeared in response to the Summons, in the Federal Court, as required by statue limitation of time, where there no reasonable excuse.

On or about August 2005, after reviewed Petitioner - Nicolas S. Laurent's First Amended Complaint filed on April 15, 2005, completely and thoroughly, in the Judge Chamber, Judge Adalberto Jordan approve the First Amended Complaint.

Thereafter, on August 22, 2005, Judge Adalberto Jordan

Order the Case # 04-22471- CIV- to Reopened.

**On December 20, 2005**, Judge Jordan erred in the Final dismissal, case closed, failed to made the ruling in Petitioner's First amended Complaint, since the First Amended Complaint didn't obtained U.S. Trustee, as one of the defendant. App. 15b-16b.

United States District Court Southern District of Florida, erred failed to gave Final Default Judgment to Joanne M. Chin, Vice President for Bank Atlantic FBS # 810, for failure to answer the First Amended Complaint.

Petitioner, Nicolas S. Laurent bring this action against Ms. Elsa C. Machado, for violates the agreement letter dated December 4, 2002, sent to Petitioner, Nicolas S. Laurent, for the return of the unapproved pre-payment of the Guardian home property taxes certificates back inside the chapter 13 payment plan, to continue the Chapter 13 payment plan, in the normal course.

**October 10, 2000,** Petitioner Laurent filed Chapter 13 voluntary reorganization payment plan, in the U. S. Bankruptcy Court Southern District of Florida, to made his payment inside the Chapter 13, to paid the creditors, including Bank Atlantic FSB # 810, for 5 years term at 18 % interest rate, approve by the trustee, the creditors, as well as the U. S. Bankruptcy Court.

On March 13, 2001, Respondent, Bank Atlantic FSB # 810, Joanne M. Chin, executed binding contract with Petitioner, Nicolas S. Laurent for $ 7, 776. 53, to received payment for 5 years term for the Guardian home property taxes, inside the Chapter 13 payment plan, at 18 % interest, accrue monthly- total $ 15,941. 89,to paid the Guardian home property **taxes.** App. 36d -39d.

Petitioner Laurent has fulfilled his entire obligation under the contract.

Petitioner- Plaintiff, Nicolas S. Laurent has complies with the terms, and condition to made his payment, inside the chapter 13 Bankruptcy court payment plan.

**C. Mr. Stephen N. Rosenthal, attorney for Hugo A. Martinez, committed fraud in the court, intrinsic** fraud in the Bankruptcy Court, Southern District of Florida.
**On October 1993,** Mr. Stephen N. Rosenthal is the attorney who represented Hugo A. Martinez, in Mr. Richard L. Pennington, and wife Guadalupe's Title Defect foreclosure action to wit, in the Eleventh Judicial Circuit Court, Dade County, Florida, Case # 92-24742 CA (21), for the property described above. App. 27d.

**On September, 12, 1996,** Respondent-Appellee, Stephen N. Rosenthal, attorney for Hugo A. Martinez signed an Affidavit of Settlement, in the Pennington litigation Title Defect to wit, in the 11 th Judicial Circuit Court, Miami - Florida, recognized, and acknowledge that his client Hugo A. Martinez committed Fraud in the Factum, on March 16, 1993, lost his right Title, interest, and claim, forever, in the property located at 13750 N. W. 7th Avenue, Miami- Florida, 33168, recorded on Harvey Ruvin Clerk official Record Book 17293, at page 2340, Dade County, Miami- Florida.

**Thereafter, on September 6, 2001**, Respondent, Stephen N. Rosenthal, on behalf of Hugo A. Martinez went to the Bankruptcy Court, with malicious intent, to committed fraud in the court, and intrinsic fraud, to fabricate a false claim in the Bankruptcy Court, to obtain Relief from stay, with a **Title defect promissory note** dated March 16, 1993, for Petitioner's Guardian home property, in a relation to proceeding under Title 11, for purpose of carrying out a fraudulent schemes, to commence a deception foreclosure action.
Petitioner, Nicolas S. Laurent object orally to Respondent,

Stephen N. Rosenthal and his client Hugo A. Martinez false representation claim, in the court.

Consequently, **on October 5, 2001,** Respondent, Stephen N. Rosenthal, attorney for Mr. Hugo A. Martinez conspire with Ms. Nancy N. Herkert, Chapter 13 trustee to made a second secret fraudulent concealment **relief, in Rem Judgment Ex-parte,** in the bankruptcy Court without statement of verification, and investigation, and without service of process to Petitioner Laurent.

Rem judgment doesn't applied to Petitioner, Nicolas S. Laurent, because Hugo A. Martinez doesn't have any mortgage nor Title claim, nor interest to justify, where Respondent, Hugo A. Martinez obtain any claim, in the property, after **June 21, 1996,** when Fidelity National Title Insurance transfer the Title of the property from Real owner Richard L. Pennington, and wife Guadalupe, First party to Nicolas S. Laurent, Second Party forever, in the Eleventh Judicial Circuit Court, Dade County, Miami- Florida, case # 92-24742 CIV (21). **App.** 33d-35d.

Petitioner, Nicolas S. Laurent, and the children never work in the ship or marine, and comply with the term, and condition of the payment plan, in the Bankruptcy court, to made his payment to Respondent, Nancy N. Herkert, every month, to paid all the creditors, inside the chapter 13 payment plan, include creditor Bank Atlantic FSB # 810, Joanne M. Chin. App. 36d - 39d.

The Bankruptcy Court judge err in executed a wrongful relief from Stay, to Respondent, Stephen N. Rosenthal, and his client, Hugo A. Martinez, without Statement of Verification, and investigation, to verify where Hugo A. Martinez has any interest or mortgage in the Guardian home property, after June 21, 1996.

Petitioner's former attorney Michael J. Brooks, Michael A. Frank, and Rodolfo De La Guardia, chapter 13 payment plan on behalf of Nicolas S. Laurent, demon-

strate that Hugo A. Martinez mortgage **is not valid,** and his not a creditor, inside the chapter 13 payment plan.

Petitioner, Nicolas S. Laurent comply and prosecute in the State Court, Eleventh Judicial Circuit Court, Dade County, Miami - Florida, and no default being entered against Mr. Nicolas S. Laurent.

Petitioner, Nicolas S.. Laurent filed answer on November 26, 2001, to the Summon, and sent a copy to Hugo A. Martinez's attorney Stephen N. Rosenthal.

Mr. Stephen N. Rosenthal failed to reply Mr. Laurent answer to the Summons, and thereafter Petitioner went to filed a second pleading on February 19, 2002, in the Eleventh Judicial Circuit Court, indicated that Mr. Laurent never received any reply, neither from the Court, nor Mr. Stephen N. Rosenthal attorney for Mr. Hugo A. Martinez. **Pet. App.** 41d.

Petitioner never received any service of process for the Summary Judgment, neither from the Eleventh Judicial Circuit Court, nor from Mr. Stephen N. Rosenthal.

Unexpectedly, on or about May 9, 2002, to May 12, 2002, An attorney contacted petitioner to indicated the is a foreclosure action in the Guardian home property.

Subsequently, on May 13, 2002, Nicolas S. Laurent filed Motion to dismissed foreclosure, without prejudice, in the Eleventh Judicial Circuit Court, indicated that Mr. Laurent never received any response for the answer filed on November 26, 2001, and for the pleading filed on February 19, 2002, neither from the court, nor from attorney Stephen N. Rosenthal. **Pet. App.** 41d.

**On May 23, 2002,** Petitioner Laurent's former attorney Steven B. Feren filed Emergency Motion, on behalf of Laurent to Judge Leslie Rothenberg, in the state court indicated that his going to have surgery, on May 24, 2002, that he will not able to appeared in court, and Petitioner's has a Responsive pleading filed

and docket by the clerk of court on February 19, 2002 and never receives a Notice of Hearing for the Motion for Summary Judgment, and to halted the foreclosure action, until this matter can be straightened out. **App.** 41d.

On May 24, 2002, Judge Leslie Rothenberg proceed with the foreclosure.

**On May 31, 2002**, Petitioner, Laurent filed objection to the Foreclosure in the Eleventh Judicial Circuit Court, Miami, Florida, indicated Hugo A. Martinez doesn't have any mortgage, nor any interest in the Guardian home property, and Petitioner have a new Title Deed for this property recorded in Dade County Public Recorded on Harvey Ruvin Clerk, on September 23, 1996, official Record Book # 17360, page 3294, in Dade County, Miami - Fl. Folio # 30-2123- 010- 0140.

Respondent, Hugo A. Martinez, and Stephen N. Rosenthal previous foreclosure made on May 24, 2002, Void in fraud the factum, and canceled in the State Court, Eleventh Judicial Circuit Court, Dade County, Miami- Florida, Case Number: 00-30948 CA 01 (32), Recorded in Harvey Ruvin Clerk of Court BK # 22494 pg 0146.

On June 6, 2002, Attorney Steven B. Feren withdrew from Mr. Laurent case, since he need more time to recuperated from the surgery.

Respondent, Stephen N. Rosenthal should not represent Mr. Hugo A. Martinez in the bankruptcy court, 2001- State court, Eleventh Judicial Circuit, and the District Court, Case Number: 04- CV- 22471, since attorney Stephen N. Rosenthal has a conflict of interest insert his name as percentage with Hugo A. Martinez, in Petitioner, Nicolas S. Laurent's Guardian home property.

An attorney cannot represented a client in the same case, and the same matter, five times in different court.

Respondent, Stephen N. Rosenthal represent Hugo A.

Martinez, for the same case, same matter, five times in different court.

The general rules is that a conflict of interest requires the recuses of attorney Stephen N. Rosenthal false representation claim, in the bankruptcy court.

In People v. Lepe 211 Cal Rptr. 432,434 (Cal App, 1985). The District attorney had formerly represented a party in two cases, the court held that the District attorney must be recuses, and his position requires disqualification of his entire office.

This case demonstrates the integrity of the judicial system, and proper respect for a fair trial, and the right to due process.

A lawyer's professional conduct precludes the lawyer from participating in a matter, or in case in which they lawyer participated personally, and substantially, while in private practice.

**D. Respondent Bank Atlantic FSB # 810, violates the Automatic Stay inside the Chapter 13 payment plan.**

Respondent, Bank Atlantic FSB # 810, Joanne M. Chin signed a contract with Petitioner, Nicolas S. Laurent, to received payment for the Guardian home property taxes certificates 1997, 1998, 1999, inside the chapter payment plan, for 5 years terms of the payment plan, at 18 % interest rate, in which Petitioner -Plaintiff comply with the term and condition, of the contract, to made his payment, inside the chapter 13 payment plan.

On November 13, 2002, when petitioner bankruptcy chapter 13 payment plan, was fully active, and effect, creditor Bank Atlantic FSB # 810, Joanne M. Chin, Ms. Nancy N. Herkert, chapter 13 trustee, decide to made fraudulent concealment, without relief from the Automatic Stay, to used the Guardian home property taxes, inside Petitioner's chapter 13 payment plan, to made **second** deception, misleading foreclosure.

**On November 14, 2002,** Petitioner Laurent filed objection to the second foreclosure, in the state court, Eleventh Judicial Circuit Miami- Florida, indicated the Guardian home property Tax is protected under the bankruptcy code. Even a State Court of General Jurisdiction Lacks subject matter jurisdiction, when it is empower to act has been divested, by Federal Statutes.

**On December 2, 2002,** Petitioner filed Emergency Motion Hearing in the bankruptcy court, for violation Bank Atlantic FSB # 810, made in the automatic Stay.

**On December 4, 2002**, Miami- Dade County property Tax Collector bankruptcy unit, Elsa C. Machado sent Petitioner Laurent a letter of apology, that it resolved the matter, of the unapproved pre-payment of the Guardian home property tax certificates, in favor of Mr. Laurent, and therefore requested the return of the pre-payment $ 10, 115. 34, for the Guardian home property taxes certificates, from creditor Banks Atlantic FSB # 810, Joanne M. Chin, back to the payment plan, to continue petitioner's chapter 13 payment plan, in the normal course. **Pet. App.** 42d-43d.

**On December 5, 2002**, In Mr. Laurent's Emergency Motion for Clarification Hearing, in the bankruptcy court, regarding creditor Bank Atlantic FSB # 810, Joanne M. Chin; Judge Paul G. Hyman Jr., recognized that the Guardian home property, includes the Tax certificates belong to Petitioner, Nicolas S. Laurent, and the children.

**Therefore, bankruptcy Judge Paul G. Hyman Jr., Order:** on paragraph **(b)** Respondent, Nancy N. Herkert, Chapter 13 trustee, Bank Atlantic FSB # 810, Joanne M. Chin, and Miami- Dade County Property Tax Collector have resolved the issue regarding the pre- payment of the tax certificates.

The trustee is authorized to return to Bank Atlantic

FSB, the sum of $ 4, 356. 58, and to continue disbursing funds pursuant to the plan, in the normal course.

**(3).** Bank Atlantic shall return to the Miami -Dade Tax Collector $ 10, 115. 34, less the $ 6. 25, redemption fee that Bank Atlantic FSB received from Miami - Dade County with regard to the unapproved redemption of the tax certificates, to continue Petitioner's payment plan, in the normal course. **Pet. app.** 44d - 45d.

Respondent, Nancy N. Herkert, Bank Atlantic FSB # 810, and Miami Dade County Tax Collector failed to abide to Judge Paul G. Hyman Jr., order, on December 5, 2002, to return the unapproved prepayment of the Guardian home property tax, which is protected under the Bankruptcy Code.

Bankruptcy Rule 9003 (a): the trustee has a duty to refrain from ex- parte meeting with the State Court concerning matter affecting a case or Civil Proceeding. **Thereafter on or about January 7, 2003,** Miami -Dade County Property Tax Collector bankruptcy unit, Rachel Baum, Board of Commissioner delete Mr. Nicolas S. Laurent name premature in his Guardian home property, to insert the name of Hugo A. Martinez % Stephen N. Rosenthal, without writ of possession, in the Eleventh Judicial Circuit, Court, and when the case still pending, in the court.

Respondent, Hugo A. Martinez, and Stephen N. Rosenthal doesn't have Writ of Possession in the State Eleventh Judicial Circuit Court, Miami- Florida, as of today.

**11 U.S. C. 704**, Respondent, -Nancy N. Herkert, failed to accountable for all property received from petitioner, and failed to examine proof of claims, and failed to - object to the allowance of any claim that is improper.

Respondent, Nancy N. Herkert is bias, prejudice, toward Petitioner, Nicolas S. Laurent.

District Court err in the order of the Final Dismissal,

indicated Petitioner failed to plead fraud. Petitioner Laurent pleads fraud with particularity, in the District court, and the Court of Appeals.

Petitioner, brings this allegation against Hugo A. Martinez for false allegation claim committed in the Bankruptcy Court, in fraud in the factum, with Title Defect Promissory note executed and delivered to Mr. Nicolas S. Laurent, on March 16, 1993.

**On September 6, 2001**, in the bankruptcy court chapter 13 Hearing, attorney Michael A. Frank indicated to Judge Paul G. Hyman, Jr., orally that he withdrawn, and no longer Mr. Laurent attorney for the case Number: 00- 50881- BKC-PGH.

From that date on, Mr. Laurent represent himself as a Pro Se, in the bankruptcy court up,. to Dec. 2002.

Courts are constituted by authority and they cannot go beyond that power delegated to them. if they act beyond that authority, and certainly in contravention of it, their Judgments and order are regarded as nullities; they are not voidable, but simply **void,** and this even prior to reversal. Williamson v. Berry, 8 How, 945, 540 12L. ED 1170, 1189 (1850).

Respondent, Hugo A. Martinez foreclosure made on May 24, 2002, and November 13, 2002, are **Canceled** in the state court, Eleventh Judicial Circuit Court, Dade County, Miami- Florida, in favor of Petitioner, Nicolas S. Laurent and the children Recorded on Harvey Ruvin Clerk **Book 22494 P G 0146.**

Respondent, Bank Atlantic FSB # 810, received payment from Petitioner, Nicolas S. Laurent $ 223, 070. 00, per month, from October 10, -2000, to December 10, 2002, inside the Chapter 13 payment plan.
Former attorney Jared J. Kullman Chapter 13 payment plan, on behalf of Laurent demonstrate from 1/10 / 2003,

to 12/ 10/ 2003, Petitioner paid $ 236, 55. 00, per month, inside the Chapter 13 payment plan, for Bank Atlantic FSB # 810, for the Guardian home tax certificates.

On or about **January 2004,** Respondent, Nancy N. Herkert filed trustee's Motion to Redirect payment, in the Bankruptcy court, indicated that the creditor Bank Atlantic FSB # 810, refused to continue received payment, in the chapter 13 payment plan, after four (4) years. **Pet. App.** 46d- 47d.

Petitioner's former Bankruptcy attorney Michael J. Brooks, chapter 13 payment plan, on behalf of Nicolas S. Laurent demonstrates from October 10, 2000, to December 10, 2002, Nicolas S. Laurent paid $ 2, 077. 70, per month, in the chapter 13 payment plan, total $ 54, 020. 20, in the bankruptcy payment plan.

On or about December 2002, Petitioner hired a new bankruptcy attorney Jared J. Kullman to continue the chapter 13 payment plan, in the normal course, on behalf of Petitioner, Nicolas S. Laurent; the payment plan demonstrates from January 10, 2003, to December 10, 2003, Petitioner, Nicolas S. Laurent paid $ 2, 410. 69, per month, total paid $ 24, 106. 90

Petitioner previously paid $ 54, 020.20, plus $ 24, 106. 90 total amount Petitioner paid to Respondent, Nancy N. Herkert, inside the chapter 13 Bankruptcy Court payment plan, **$ 78, 127 . 10.**

Respondent, Nancy N. Herkert, failed to credit Petitioner more than $ 24, 106. 90, inside the plan.

Thereafter, on November 10, 2004, Respondent, Nancy N. Herkert, Chapter 13 trustee filed Notice of Deposits of balance funds in the U.S. Bankruptcy Court, $ 4, 681.64, out of $ 24, 106. 90, dollars, failed to credit Petitioner, inside the Chapter 13 payment plan, case Number 00-50881-BKC-which is still in the Court Registry as of today.

Now, the remaining balance is $ 19, 425. 26, which -

Respondent Nancy N. Herkert, trustee, failed to credit Petitioner, inside the Chapter 13 payment plan.

Petitioner Laurent doesn't owed Respondent, Nancy N. Herkert payment, inside the chapter 13 payment plan.

Respondent - Nancy N. Herkert, has a tendency to dismissed the Chapter 13 payment plan, in order to conceal the violation, and fraudulent transferred that occurred inside Petitioner's Chapter 13 payment plan.

District Court Judge Jordan failed to gave default to Respondent, Nancy N. Herkert, Chapter 13 trustee, Bank Atlantic FSB # 810, Joanne M. Chin and Miami Dade County property tax Collector, and the other Respondents for failing to abide by Judge Paul G. Hyman, Jr. order, on December 5, 2002, to return the unapproved pre- payment of the Guardian home property tax certificates.

**On October 10, 2006,** Petitioner, Nicolas S. Laurent filed Notice of Intent to the Supreme Court.

Thereafter, on October 12, 2006, Court of Appeals abused its discretionary system, by insert three wrong new individual, as Defendants in the mandate.

Melrose Park National v. Capitol Bank trust 180 111 App. 3d 662, 536 N. E. 2D 104 (1989).

Norris vs. Estate of Norris 143 111 app. 3d 741, 748, 493, N.E 2d (121) (1986).

Raymark Industries v. La 973, F2d 1124 (3d Cir, 1992), Supremacy Clause of the United States which provide the law of the United States Constitution are supreme law of the land, no withstand any state law.

**18 U.S.C.§ 152** –Respondent- Stephen N. Rosenthal knowingly made fraudulent representation, verification, or statement under penalty of perjury under section 1746, of Title 28, in or relation to any case under title 11, knowingly and fraudulent presented false claim, for proof against the estate of Petitioner, Nicolas S. Laurent.

## REASONS FOR GRANTING THE PETITION:

Petitioner, Nicolas S. Laurent filed this Petition to Supreme Court of the United States to grant Petitioner Petition for Writ of Certiorari, for order deny Petition for Rehearing filed in the court of Appeals, on September 29, 2006, affirmed, on July 14, 2006, and also for the following reasons.

**I. Court of Appeals abused its discretionary failed to vacate the order deny Petition for Rehearing, on September 29, 2006, and affirmed on July 14, 2006,** which contain three –wrong individual stranger, as defendant- Appellees which are not parties in the First Amended Complaint filed on April 15, 2005, in the United States District Court.

The opinion of the Eleventh Circuit that this case has no merit is an abuse of discretion. This petition has great merit for the proper administration of Justice.

Court of Appeals erred made ruling in this case by insert three wrong individual defendant- Appellees names,. **United States Trustee, Hugo Maritnez, and Steven N. Rosenthal** in the order on September 29, 2006, and on July 14, 2006, which are not parties, in the Notice of Appeal filed on July 12, 2006, in the District Court to Court of Appeals for Eleventh Circuit.

On July 14, 2006, Court of Appeals three Panel Judges order affirmed the District Court order was not signed by any Judges. **App.** 1a-8a.

The ruling or order of the Court are to be in writing, and signed by a judge. Rules 74. 01 (a), 74 02, and administrative Rules 4.09 (6), which require that judgments and order be in writing, and signed by judge.

The ruling made on July 14, 2006, should declare void, because it was not signed by a Judge, and they were too many clerical mistakes made in this case.

Slay v. Slay, 965 S.W. 2d at 845, the Missouri Supreme-Court has clearly upheld, and the plain of the rules deciding orders not signed by judges are void.

Court of Appeals erred on September 29, 2006, deny Petitioner –plaintiff's Petition for Rehearing filed timely on August 28, 2006.

On August 28, 2006, Petitioner- plaintiff, Nicolas S. Laurent filed Petition for Rehearing to Court of Appeals to reconsider to vacate or reverse July 14, 2006, order affirmed District Court order dated December 20, 2005, and January 4, 2006.

On July 14, 2006, and on September 29, 2006, Court of Appeals err made ruling in the wrong document which Petitioner - plaintiff already amended on April 15, 2005, in the District Court Southern District of Florida.

Court of Appeals insert three individual names, which-Petitioner doesn't recognizes as Appellees.

On April 15, 2005, Petitioner Laurent filed the First Amended Complaint, delete United States Trustee.

First Amended Complaint list only the Children's Initial, not their full name, which Petitioner discussed this issue, with the Clerk of Court, in the phones, and went to the Court of Appeals with documents to clarify the heading, in so many occasions. **App. 25c**

Petitioner, Nicolas S. Laurent has the right to due process of the law pursuant to 14th amendment to the United States Constitution.

The right due process includes the right to safeguard to ensure that they cases are decided by those vested with Judicial Authority.

The three Judges in the Court of Appeals came back 5 times, to made ruling, in the same Petitioner's- cases, for the same related matter, in the United States Court of Appeals for Eleventh Circuit.

Federal Rules of the United States Supreme Court,

indicate when a judge or attorney perceives a conflict of interest in a case, the judge or attorney should appoint another member of the Court or bar to rule over this matter.

The fair and impartial administration of justices holds that the Judge or attorney is precluded from ruling in the same Petitioner's case, for the same matter.

Court of Appeals erred on July 14, 2006, in the Opinion Affirmed the United States District Court Southern District of Florida, final dismissal order, on December 20, 2005, and on January 4, 2006.

Petitioner was not accorded a fair trial, and impartial to which he was entitle under the due process Clause of the Fourteenth Amendment.

Petitioner, Nicolas S. Laurent have a contract signed with creditor Bank Atlantic FSB, # 810 Joanne M. Chin to received payment, inside the Chapter 13 Bankruptcy court payment plan, for 5 years term, approved by Ms. Nancy N. Herkert, Chapter 13 trustee, the creditor, as well as the bankruptcy Judge Paul G. Hyman, Jr,.

**On November 13, 2002,** when petitioner, Nicolas S. Laurent 's Chapter 13 payment plan was fully active, and effect, creditor Bank Atlantic FSB # 810, Joanne M. Chin, made fraudulent concealment, without relief from the automatic Stay, to used the Guardian home property taxes, inside Petitioner's chapter 13 payment plan illegal, to made **second** deception, misleading foreclosure, in State court, Eleventh Judicial Circuit Court, which Petitioner Laurent filed objection, on November 14, 2002.

Proceeding that violate the Automatic stay are void, and of no effect. Kalb v. Feurstein, 308 U.S. 433.60 S. Ct 343, 346, 84L. Ed. 370 (1940). The action of the Court was not merely erroneous, but was beyond its power, and subject to collateral attack.

Respondent, Bank Atlantic FSB # 810, violate the automatic Stay pursuant to 11 U. S. C. 362 **(h).**

Creditor Bank Atlantic FSB # 810, Joanne M. Chin refused to continue received payment inside the chapter 13 payment plan, after four years contract signed in the Federal Court, with Petitioner, Nicolas S. Laurent, for the Guardian home property tax Certificates.

Petitioner's First Amended complaint filed on April 15, 2005, states claim, in which relief can be granted, detail and plead fraud with particularity. **App. 25c.**

Petitioner -plaintiff's First Amended complaint provides more definite statement, to each individual defendant.

District Court Judge Adalberto Jordan erred in the order on December 20, 2005, since the United States trustee is not a Defendant in Petitioner's First Amended Complaint filed on April 15, 2005.

Carter vs. Rodgers doesn't apply to Petitioner, Nicolas S. Laurent, since Petitioner filed Chapter 13, not Chapter 7, and U. S. Trustee is not a party in the First Amended Complaint filed on April 15, 2005.

Court of Appeals and District Court erred in naming Nancy N. Herkert as U.S. Trustee.

Respondent, Nancy N. Herkert is a private individual and not component of Justice Department; they can be litigate.

**II Court of Appeals decision is in conflict with Second Circuit Court.**

Rules 15 (a) provide that Leave to amend a pleading should be giving freely, when justice so requires.

In assessing whether leaves to amend is proper, the court should consider whether the proposed amendment - would cause the opposing party undue prejudice, which it did not.

The Supreme Court and the Second Circuit Court have emphasized that leave to amend should be given freely, only be denied if there is good reason for it.

The District Court doesn't have any good reason to deny Petitioner- plaintiff's Leave to amend the First Amended Complaint.

The absence of any apparent or declared reason, such as undue delay, bad faith, Leave should be given freely.

Min Jin v. Metro Life Ins. Co. 310 F. 3d 84, 101 (2d Cir, 2002): Block v. First Blood Association 988 F. 2d 344, 350, (2d Cir. 1993).

State Teachers Retirement Bd. v. Fluor Corp., 654 F. 2d 843, 856 (2d Cir. 1981}.

If the plaintiff has at least colorable grounds for relief, Justice so require leave to amend to be granted, absent prejudice.

**Plaintiff Laurent have ample ground for relief to be granted.**

Burns v. Imagine films Entm't Inc., 16 F.R.D. 381, 385 (W. D. N.Y. 1992).

Elgin, Joliet & Eastern Ry Co v. Industrial ommunity 9111 2d 505, 507, 138 N.E. 2 D 553 (1956).

Ascon properties Inc, v. Mobil oil Co 866 F. 2d 1149, 1160, 9th Cir, 1989.

Petitioner has complied with the term, and performed his obligation under the contract.

The defendant Appellees failed to demonstrate evidence to support their motion to dismiss.

When a Federal Court review sufficiency of complaint, before reception of any evidence. The issue is whether plaintiff will ultimate prevail, but whether claimant is entitled to offer evidence to support claims.

Scheuer v. Rhodes, 416 U.S.232, 236, 40L ED 90 94 S. CT. 1683 (1974).

The ninth circuit that specifically rejected the reasoning of the case which the trustee relies for the proposition that a trustee is only liable for intentional act. Dioguardi vs. Durning 2 Cir. (1944) 139 F. 2d 774.

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[3] A judgment is void if the court acted in a manner inconsistent with due process. A void Judgment is a nullity and can be vacated at any time.,' Kan. at 862.

In Panel Review of Law de Novo under Kashani and in re Cochise College Park 703 F. 2d 1339 (9th Cir. 1983), on which the panel in kashani relied, the trustee, and her staff are not immune from suit for alleged negligent action that amount in violation of those duties.

Judge Adalberto Jordan failed to exercise the proper legal standard in Final order dismissing the case, on December 20, 2005, and on January 4, 2006.

The defendants failed to prove that Petitioner's Complaint is a claim, for which relief cannot be granted.

Judge Adalberto Jordan didn't took petitioner's factual allegation as true and did not liberally construe, petitioner complaint as required by the law, before dismissing. Forman v. Davis, 371, U.S. 178.

Furthermore, a motion to dismiss is not supposed to decide the merit of a case.

Motion to dismiss pleading is to be granted sparingly, and with caution.

Kingwood oil Co. v. Bell 204 F. 2d 8, 13 ( 7 th Cir. 1953). A trustee must also ensure that the rights of the Bankrupt, as defined by the Bankruptcy code & rules are not abused.

It is not even necessary that a plaintiff's request appropriate relief, properly categorized, or point to any legal theory at all. ( Complaint need not point to appropriate theory, or even if it to wrong theory as long as relief is possible to established consistent with the Allegation, Constitution Bank vs. Stubbs, 68 F. 3d 685 (3d Cir. 1995).

**362 K (1)**- an individual injured by any willful -

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4. The parties moving for dismissal must show beyond doubt that the plaintiff can prove no set of fact in support of his claim (that would entitle to relief, Conley v. Gibson, 335 U.S. 41, 45-46 ( 1959)

violation of automatic Stay provided by this section shall recover actual damage including cost, and attorney's fees, and appropriate circumstance may recover punitive damages.

In reviewing a motion to dismissed, we assumed all fact alleged by plaintiff's are true. Id- Dismissal is only proper If it appears that a plaintiff is unable to prove any set of fact entitling the plaintiff to relief.

Petitioner also has personal Jurisdiction, since the parties involved in the litigant are present in the state or legal resident of the state, in which the lawsuit has been filed, or if the transaction in question has substantial connection to the state. River park Inc., vs. City of Hyland Park 111 2D 290 306, 703, N.E. 2D 883(1998), 18 U.S.C. § 3057.

Petitioner prays the Supreme Court of the United States to grant Petitioner Laurent and the children, Petition for Writ of Certiorari, since Petitioner and the children are the true legal owner with the Title of the property, and also for reasons discussed above as well as those set forth in the petition.

I, Nicolas S. Laurent do solemnly swear that the above statement is true and complete to the best of my knowledge.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Nicolas S. Laurent
P . O. Box 260189
Boston, Massachusetts
Tel: ( 617 ) 894- 9774
Pro Se / attorney

Dated March 23, 2007

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
(Entered on July 14, 2006)

No. 06 – 10516
Non - Argument Calendar

D. C. Docket No. 04 –22471 - CV - AJ

NICOLAS S. LAURENT, Guardian
for Jeffrey S. Laurent,
Arthur S. Laurent, Nathalie S.
Laurent, Barbara S. Laurent,
Plaintiffs - Appellants

versus

UNITED STATES TRUSTEE,
Nancy N. Herkert,
BANK ATLANTIC F. S. B.,
JOANNE M. CHIN, Vice President
for Bank Atlantic Federal
Savings Bank # 810,
ELSA C. MACHADO, Property Tax Collector
MIAMI-DADE COUNTY PROPERTY TAX COLLECTOR,
RACHEL BAUM, Finance Director,
MIAMI DADE COUNTY COMMISSIONERS,
MIAMI DADE COUNTY,
HUGO MARITNEZ,
STEVEN N. ROSENTHAL, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

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**( July 14, 2006),**

Before HULL, MARCUS and WILSON, Circuit Judges.

PER CURIAM:

Nicholas S. Laurent, proceeding pro se appeals the district court's dismissal of his amended complaint against certain state and private defendants. After review, affirm.

## 1. BACKGROUND

Laurent, a resident of Florida, filed this action pro se in the United States District Court for the Southern District of Florida seeking relief based on events that occurred during the pendency of a Chapter 13 bankruptcy action commenced by Laurent in the Southern District of Florida. Laurent's amended complaint named as defendants Nancy N. Herkert, United States Bankruptcy Trustee, Joanne M. Chin, the Vice - President for Bank Atlantic Federal Savings Bank # 810; Bank Atlantic Federal; Hugo A. Martinez, a mortgagor who foreclosed on Laurent's home; Stephen N. Rosenthal, Martinez's attorney; Elsa C. Machado, a property tax collector; Rachel Baum, a county finance director; Miami- Dade County Tax Collector; and

the Miami –Dade County Board of County Commissioners. Laurent alleged that all defendants were either residents of Florida or authorized to do business in Florida.

The District court dismissed without prejudice Laurent's original complaint for failing to comply with Federal Rule of Civil Procedure 8 (a), for failing to obtain permission to sue the bankruptcy trustee and for lack of diversity jurisdiction.

The district court sua sponte granted Laurent leave to file an amended complaint, which Laurent did. Laurent's amended complaint name the same defendants and asserted claims of fraud ( count 1 ), misconduct (count 2), breach of contract ( count 3 ), and misrepresentation (count 4). Within the body of the amended complaint, Laurent also alleged a number of federal criminal violations, and a violation of an automatic stay in the bankruptcy proceedings.

Upon the defendants' motions the district court dismissed the amended complaint without prejudice as to all parties for lack of subject matter jurisdiction.[1]
The district court concluded that Laurent's claims were either criminal claims for which there was no private cause of action or state tort claims for which there was no diversity of citizenship. The district court noted

[1] The district alternatively dismissed the amended complaint for failing to (1) comply with rule 8 ( a ); ( 2 ) obtain permission to sue the bankruptcy trustee;, ( 3 ) states claims upon which relief could be granted; ( 4 ) plead fraud with particularity; and ( 5 ) provide a more definite statement.

that Laurent raise one possible federal claim; that Chin violated the automatic stay requirement of 11 U.S.C. §362(a). However, as to that potential claim, the district court concluded that the amended complaint failed to state a claim for which relief could be granted because Laurent admitted that the bankruptcy court had granted an inception to the stay, that making a violation of the stay impossible.[2] Finally, the district court determined that the claim against bankruptcy trustee Herkert failed because Laurent had not first received leave from the bankruptcy court to sue the trustee.

Although the district court dismissed the amended complaint without prejudice, the district denied leave to amend and directed Laurent to seek leave, as required by federal Rule of Civil Procedure 15(a), before filing a second amended complaint, as follows:

"I am not dismissing with prejudice as this time, though I am tempted to do so. At the same time, I am not granting Mr. Laurent leave to file another amended complaint, he must seek and obtain leave of court to do so as required by rule 15 (a). Any motion for leave to file must be accompanied by the second amended complaint"...

Any request to file a second amended complaint must be filed by January 13, 2006. Laurent did not seek leave to file a second amended complaint, Instead, Laurent filed this appeal.

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[2] Assuming alternatively that this potential claim created **Federal question jurisdiction**, the district court declined to exercise **supplemental jurisdiction** over the state law claims.

## I. DISCUSSION

On Appeal Laurent argues that the district court erred by dismissing his complaint for lack of subject matter jurisdiction. We review de novo the district court dismissal of a complaint for lack of subject matter Jurisdiction. Samco Global Arms, Inc. v. Anita, 395, F. 3d 1212, 1214 n.4 (11th Cir. 2005). In order to have subject matter jurisdiction, a district court must be able to exercise either diversity jurisdiction or Federal question jurisdiction. 28. U. S. C. § § 1331, 1332.

Diversity Jurisdiction exist if "the matter in controversy exceeds the sum or value of $ 75, 000, exclusive of interest and costs, and is between ...citizens of different states." 28 U.S.C..§ 1332 (a) (1). As for Federal question Jurisdiction, 28 U.S.C.§1331 provide that "[t]he district court shall have original jurisdiction of all .. civil action arising under the Constitution, laws, or treaties of the United States. "28 U. S.C.§ 1331.

Here, no diversity existed at all the parties were Florida citizens. Furthermore the district court correctly determined that no Federal questions Juririsdiction existed between Laurent's claims were based on state common law, torts specifically the torts of fraud, breach of contract, misconduct, and misrepresentation. See 28 U . S.C.§ 1331. The district court also lacked subject -

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[3] As the district court correctly noted , Laurent's only potential claim, amended under 11 U. S. C.. 362 (h) is not viable because Laurent allege in his amended complaint that

matter Jurisdiction over Herkert, as Chapter 13 trustee, because Laurent failed to get permission from bankruptcy Court to sue her. See Carter vs. Rodgers 220 F.3d 1249, 1252 (11th Cir. 2000) ( concluding that a Federal district court has no subject mater jurisdiction over a suit against Chapter 13 Bankruptcy Trustee, unless the plaintiff first obtains permission to proceed from the bankruptcy court).

Though Laurent argues that he did receive permission to file suit, he made no such allegation in his amended complaint, and did not seek leave from the district to amend that complaint to add such an allegation.

Laurent additionally argues that the district court abused its discretion is not sua sponte granting him leave to filed a second amended complaint. A party to a civil action may amend its pleading once as a matter of course before a responsive pleading is served. Fed. R. Civ.P. 15 ( a ). Otherwise, a party must obtain leave from the court to amend a pleading, though "leave shall be given freely when justice so requires." Id We review-

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The bankruptcy court gave the parties in the current suit an exemption from the stay. Consequently, to the extent the amended complaint allege a claim under 11. U. S. C. S .. § 362(h), the district court properly dismissed it for failure to state a claim for which relief can be granted.

Furthermore. given Laurent's admission in his amended complaint, the claim was wholly insubstantial, and frivolous and properly dismissed for lack of subject matter jurisdiction. See Blue Cross & Blue shield of Ala. vs. Sanders, 138 F. 3d 1347 1351-52 (11Th Cir. 1998).

(Explaining that a Federal question claim may be dismissed for lack of subject matter jurisdiction. If the "claim is wholly insubstantial, and frivolous } ( Citation omitted}, Moreover, the district court did not abuse its discretion in declining to exercise supplemental jurisdiction over Laurent's state law claim once it determined that it lack jurisdiction to entertain the potential § 362(h) claim. See Raney v. Allstate Ins. Co. 370 F. 3d 1056, 1088-89 ( 11th Cir. 2004 ).

a district court's denial of leave to amend for clear abuse of discretion. Andrex Pham v. Elan Corp. PLC, 421 F. 3d 1227, 1236 ( 11th Cir. 2005 ). " Leave may be denied because of undue delay, bad faith or dilatory motive on the part of the Movant, repeated failure to cure deficiency by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or ] fertility of amendment." Id, (citation and quotations omitted ).

The district court did not abuse its discretion by failing to give sua sponte Laurent Leave to file a second amended complaint. Responsive pleading had been filed in Laurent's action. Therefore, Laurent was required by Rule 15 ( a ) to obtain leave from the district court before filing a second amended complaint.

Furthermore, the district court had already given Laurent one opportunity to amend his complaint and was not require to give him a second chance. thus, the district court did not abuse its discretion . in dismissing Laurent's amended complaint without prejudice.

Finally, the district court's dismissal order even advised Laurent that he could seek leave to file a second amended complaint. However, Laurent chose to appeal the dismissal order and failed to seek leave to file a second amended complaint. If Laurent is now barred

from amending his complaint, it is not because of a clear abuse of discretion on the part of the district court, but due to his own failure to make the motion required by Rule 15 (a). See Andrx Pharm, 421 F. 3d at 1236.

Accordingly, we affirm the district court's dismissal of Laurent's amended complaint.

**AFFIRMED.**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**
( Entered on September 29, 2006)

No. 06-10516-FF

NICOLAS S. LAURENT, Guardian
For Jeffrey S. Laurent,
Arthur S. Laurent, Nathalie S.
Laurent, Barbara S. Laurent.

Plaintiff - Appellant,

versus

UNITED STATES TRUSTEE,
NANCY N. HERKERT,
BANK ATLANTIC F.S.B.
JOANNE M. CHIN Vice President
for Bank Atlantic Federal Saving Bank # 810,
ELSA C. MACHADO, Property Tax Collector
MIAMI DADE COUNTY PROPERTY TAX COLLECTOR
RACHEL BAUM, Finance Director,
MIAMI DADE COUNTY COMMISSIONER, Miami Dade County, FL,
HUG0 MARITNEZ
STEVEN N. ROSENTHAL, et, al.,

Defendant-Appellees

from the United States District court for the
Southern District of Florida

Before: HULL, MARCUS, AND WILSON, Circuit Judges
ON PETITION (S) FOR RE HEARING AND PETITION (S) FOR REHEARING EN BANC
Before: HULL, MARCUS, AND WILSON, Circuit Judges.
PER CURIAM:

The Petition (s) for Rehearing are DENIED and no Judge in regular active service on the court having requested that the court be polled on rehearing en banc ( Rule 35, Federal Rules of Appellate Procedure ), The Petition (s) for Rehearing En Banc are denied.

ENTERED FOR THE COURT:

/s/_____
FRANK M. HULL
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI-DIVISION
( Entered on March 22, 2005

CASE NO. 04-22471-CIV-JORDAN

| | | |
|---|---|---|
| NICOLAS S. LAURENT,et, al, | ) | **CLOSED** |
| | ) | **CIVIL** |
| Plaintiffs | ) | **CASE** |
| | ) | |
| vs. | ) | |
| NANCY N. HERKERT, UNITED STATES TRUSTEE, et, al, | ) | |
| Defendants | | |

**ORDER**

This case has been assigned to me following there-cusal of Judge Cooke and Lenard. As explained below, the complaint is DISMISSED WITHOUT PREJUDICE.

1. Upon review of the file, the plaintiffs' motions for default against Ms. Baum { D.E 34}, Bank Atlantic { D.E 31}, Ms. Chin { D.E 33}, and Miami Dade Board of County Commissioners { D.E 32}are all Denied. All of these defendants have either answered the complaint or moved to dismiss. { D. E 26 27}.

The motion to dismiss and / or for a more definite statement { D. E 27} filed by the Miami- Dade defendants ( Ms Machado , Ms Baum, the Miami Dade Property Tax Collector, the Miami Dade Storm Water Utility ), to which the Plaintiffs have not responded, is GRANTED. The

complaint, which names 12 individual, corporate, and governmental defendants, contains 131 paragraph without any identification of which defendants are being sued under what theories.[1] The complaint therefore violates Rule 8 (a), as explained by cases like Magluta v. Samples 256 F. 3d 1282, 1284_85 ( 11th Cir. 2001 ), and Simmons v. Abruzo, 49 F. 3d 83, 86, ( 2d Cir. 1995) Simply put, it is impossible to figure out what is being alleged against each one of the defendants and what legal claims are being made against them. At the very least, the defendants are entitled to a more definite statement. See Anderson vs. District Bd of trustee, 77 F. 3d 364, 3666-67 (11th Cir. 1986).

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[1] All of these paragraphs are included in the "Statement of Facts" section of the complaint.

There is another reason why dismissal is appropriate. To the extent that any claims can be discerned from the complaint, the plaintiffs have, despite their allegations to the contrary, stated only state law claims for breach of contract, property damage, quiet title, and foreclosure.[2] But there is no diversity jurisdiction under 28 U. S. C. §, 1332 because Mr. Laurent, the lead plaintiff, is a citizen of Florida, and various of the defendants ( e.g. Ms. Machado, Ms Chin, Mr. Rosenthal ) are also citizens of Florida.

3. The motion to dismiss filed by Mr. Rosenthal D.E 37 ], to which the plaintiffs have not responded is also granted, for the reason set forth in paragraph 2. I do not reach Mr. Rosenthal's res Judicata Argument, which are based on matters outside the four corners of the complaint, and would require converting the motion into a motion for summary judgment.

4. The motion to dismissed [D.E 41] of Ms. Herkert, the Chapter 13 trustee, to which the plaintiffs have not responded, is granted. Because the plaintiffs have not obtained the permission of the bankruptcy Court to sue Ms Herkert, subject matter Jurisdiction does not exist as to any claims made against her. See Carter v. Rogers, 220 F. 3d 1249, 1252 ( 11th Cir. 2000. }

The complaint is therefore dismissed without prejudice. Any amended complaint must be filed by April 15, 2005, must comply with Rule 8 ( a ), and must set out a-

proper basis for Federal Jurisdiction. All pending motions are Denied as Moot, and this case is closed for the time being.

DONE and ORDERED In Miami, Florida, this 22nd day of March 2005.

/s/ ---------- ----------
Adalberto Jordan
United States District Judge

Copies to Magistrate Judge Brown, Nicolas S. Laurent et al., pro se. P.O. Box 693631, Miami, FL 33269, and counsel of record.

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[2] The Federal statutes cited by the plaintiff in the complaint do not provide them with cause of action. First, 28 U. S. C. § 2409 deals only with partition actions where the United States is one of the owners of real property. Second, 31 U. S .C. § § 3729 and 3731 deals with actions for false claims made against the United States. Third, 11 U. S. C. § 548 allows a bankruptcy trustee-- and not a debtor- to sue to set aside an allegedly fraudulent transfer.
Fourth, 20 U. S. C. § 1440 et seq., the individuals with Disabilities Education act is inapplicable because there is no allegation that any of Mr. Laurent's minor children are covered under the Act, and because the defendants sued here, in any event are not proper defendants under the Act.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI-DIVISION
( Entered on December 20, 2005 )

CASE NO. 04-22471-CIV -JORDAN

| | | |
|---|---|---|
| NICOLAS S. LAURENT,et, al, | ) | **CLOSED** |
| | ) | **CIVIL** |
| Plaintiffs | ) | **CASE** |
| | ) | |
| vs. | ) | |
| NANCY N. HERKERT, UNITED STATES TRUSTEE, et, al, | ) | |
| Defendants | | |

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ORDER OF DISMISSAL

On March 22, 2005, I dismissed Mr. Laurent complaint without prejudice for violation of Rule 8 ( a ). lack of diversity urisdiction and failure to obtain permission to sue the bankruptcy trustee. See order of Dismissal {D. E. 46 } ( attached ) Following the dismissal Mr. Laurent filed 38 pages amended complaint purportedly ( containing 199 paragraphs ) with numerous attachments.

The rambling amended complaint purportedly contains counts for Fraud (Count I ), misconduct {Count II (breach of contract, and misrepresentation {Count IV ). Each of the counts relates to matter that allegedly occurred during Mr. Laurent bankruptcy case ( e.g. Matters concerning a motion for relief from the automatic stay filed by Mr. Martinez, and matters related to certain property.

The defendants have moved to dismiss Mr. Laurent's amended complaint. for the following reasons. The defendant's motion { D E 67, 70, 77, 89, } are granted.

The amended complaint is dismissed without prejudice for lack of subject matter jurisdiction, and alternatively for failure to comply with Rule 8 ( a ), failure to obtain permission of the bankruptcy court to sue the trustee, failure to state claims upon which relief can be granted, failure to plead fraud with particularity. and for failure to provide a more definite statement.

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[1] For further background on Mr. Laurent see Laurent vs. Herkert. 149 Fed Appendix 833 ( 11th Cir. Aug. 22, 2005.

First subject matter jurisdiction is lacking. Excerpt for one possible claim which insufficient under Rule 12 (b) ( 6 ) and as discussed in a footnote.[2] There is no Federal question jurisdiction under 28 U. S. C.§§ 1331, or 1334 for any of Mr. Laurent claims. Each of the claims is based on Florida common law, and the fact that Mr. Laurent cites to various federal statutes within the body of each claim doe not convert any of claims into Federal ones. See Merrell Dow Pharmaceutical. Inc. v. Thompson, 478 U.S. 804, 815-17 ( 1986 ), Diaz v. Sheppard, 85 F, 3d 1502, 1504, -06 (11th Cir. 1996. )[3] There is also no diversity jurisdiction under 28 U.S.C. § 1332. Mr. Laurent alleges that he is a citizen of Florida. and at least some of the defendants are also citizens of Florida ( e.g., ), the Miami Dade County Tax Collector, the board of County Commissioners of Miami-Dade County) Thus there is not complete diversity as required by § 1332. and precedent. See generally Cardoen v. Arkoma Association, 494 U.S. 185, 187 ( 1990). –

Second the claims against the bankruptcy trustee, Ms Herkert, must be dismissed for the same reason they were dismissed first time around. Mr. Laurent has not obtain the permission-

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[2] The one possible Federal claim is Mr. Laurent allegation in paragraph 79 of the amended complaint that Ms. Chin, Bank Atlantic's Vice -President violated the automatic stay provision 11 U. S. C. § 362 ( a ). Although the Eleventh Circuit has held that a district court has original jurisdiction under § 362 ( h ) to entertain a claim for violation of an automatic Stay, See Justice Cometh Ltd v. Lambert, 426 F.3d 1342, 1343 ( 11th Cir. 2005 ), there are no well pleaded allegation that Ms Chin violated the Automatic Stay. Mr. Laurent himself alleges in paragraph 23, and 24 that the bankruptcy court lifted the Stay for Mr. Martinez to pursue certain state court remedies, and the alleged failure of Ms. chin, and Bank Atlantic to not accept certain tax payments-is not a violation of automatic stay, In other words, what Ms. Chin did or failed to do, accept certain tax payment did not constitute the taking of any action against Mr. Laurent, or the bankruptcy estates. So, to the extent that paragraph 79 of the amended complaint-included within court II (misconduct )-independently seeks to state a claim under § 362 ( h ), it fails to state a claim upon which relief can be granted.

Assuming the paragraph 79 liberally created Federal question jurisdiction. I decline to exercise supplemental jurisdiction over the remaining state law claims given that any claim in paragraph 79 has been dismissed. See 28 U. S.C. § 1367 ( c ) ( 3 ).

[3]In any event the Federal statues Mr. Laurent cites are criminal statutes which do not provide him with a civil right of action ( e. g. 18 U. S. C. . § § 152 ( concealment of assets and false oath, 153 (embezzlement against bankruptcy estates ), 157 ( bankruptcy fraud ), and 3057 (bankruptcy investigations ).. There is no indication that Congress intended for these criminal provisions to allow for implied civil causes of action. See Generally Curt v. Ash. 472 U. S. 66, 79-80 (1975 ) ( no implied civil right of action where there was " "nothing more than a bare criminal statutes with absolute no indication that civil enforcement was available for anyone." )

of the bankruptcy court to file an independent action against Ms. Herkert in her capacity as the trustee. See Carter v. Rogers, 220 F. 3d 1249, 1252 ( 11th Cir. 2000) Nowhere in his opposition papers does Mr. Laurent contend that he obtained the requisite permission.

Third like the initial complaint, most of the amended complaint fails to comply with Rule 8 (a).

In certain counts, Mr. Laurent states in bold who he is suing ( e.g., Counts I, II, and IV), but then commingles legal theories against different defendants named in the same count., For example in Count II misconduct Mr. Laurent alleges in paragraph 74-79, that Ms. Chin "committed fraud, took ( Mr. Laurent's assets," violated the automatic Stay, and breach a contract.

Furthermore, in Count III ( breach of contract ), though he alleges action taken by various defendants, he fails to indicated who the claim is against, or what damage are sought. As yet another example of the rambling nature of the pleading, it is often unclear ( e g, paragraphs (116-20 ) whether Mr. Laurent is alleging the contents of a motion he filed or of an order the bankruptcy court supposedly entered. the defendants should not be required to guess what is being allege against them, and dismissal is therefore warranted. See e. g., Magluta v. Samples., 256 F. 3d 1282. 1284- 85 ( 11th Cir. 2001 ).

Fourth to the extent that the amended complaint is based on allegations of fraud, it failed to comply with Rule 9 ( b). Simply stated the amended complaint does not allege fraud with the necessary particularity.. See

Brooks vs. Blue Cross, and Blue Shield, 116 F. 3d ( 1364, 1371 ( 11th Cir. 1997 ).

Fifth, the amended complaint does not provide a more definite statement as previously order under Anderson vs. Disrict Board of trustee 77 F 3d 364, 366 ( 11th Cir. 1996. )

As a result of the dismissal of the amended complaint. Mr. Laurent's motion for Default { DE. 73, 86 are denied. The clerk default against Ms. Chin is vacated due to the lack of subject matter jurisdiction, and the dismissal of the amended complaint. See Nishimaisu Const v. Houston National Bank, 515 F. 2d 1200 (5th Cir. 1975 ).

I'm not dismissing with prejudice at this time, though I am tempted to do so. At the same time I'm not granting Mr. Laurent leave to file another amended complaint. If Mr. Laurent wants to file another amended Complaint, he must seek and obtain leave of court to do so as required by rule 15 (a). Any motion for leave to file must be accompanied by the second amended Complaint. Mr. Laurent shall not serve any further amended complaint on any defendant until I have allowed him to file that pleading. If any defendant is served by Mr. Laurent before I grant leave, that defendant shall not be required to answer until I rule on Mr. Laurent's request and until Mr. Laurent subsequently effects service.

Any request to file second amended complaint must be filed by January 13, 2006. Mr. Laurent is placed on notice that he may be subject to sanctions if he seeks to file another deficient amended complaint.

This case is closed, any pending motion not disposed in this order are denied as moot.

Done and Ordered in Chambers in Miami- Florida this 19th day of December 2005.

/s/_____
Adalberto Jordan
United States District Judge

Copies to Magistrate Judge Klein, Nicolas Laurent et al, pro se,. P. O . Box 693631, Miami, Florida 33269. and counsel of record.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www. flsb. Us courts. gov

In re: In a Chapter 13 proceeding
Case Number 00-50881-PGH

NICOLAS S. LAURENT Adv. Case Number ____
County of Residence Principle

Debtor / Place of Business Dade

TRANSMITTAL OF MOTION FOR LEAVE TO APPEAL TO CLARENCE MADDOX COURT ADMINISTRATOR / CLERK OF COURT.

The party or parties included In the Motion:

Movant /

Appellant (S) Nicolas S. Laurent

Attorney Pro Se
POB 693631
Miami, FL 33269

**Respondent**
**Appellee( S)**

**Attorney:**_____

**Title & Date of order to be appeal:Order Granting trustee Motion to Redirect. Payment.**

Entered on Docket Date July 21, 2004 Docket No. 140

[ √] Motion for Leave to Appeal [ ] Respondent's Answer
[√ ] **Notice of Appeal** [ ] Movant's Reply
[√ ] Copy of Docket
[ ] **Other** _____

**KAREN EDDY, CLERK OF COURT**
**By:HS Montyglard**
**Deputy Clerk, USBC**
**Telephone No: 654-769-5700**

**Dated Aug. 17, 2004**

**Bankruptcy RULE 8003 Acknowledgment 0f Assignment in District Court**

District Court Case Number: 04-22076 Civ-Cooke /McAliley

CLARENCE MADDOX
COURT ADMINISTRATOR / CLERK

By: /s/_____
Deputy Clerk, USDC
Telephone No: _____

USDC
ATTORNEY FOR MOVANT
ATTORNEY-FOR-RESPONDENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
( Entered on March 9, 2005 )

CASE No.: 04-CIV- 22471- COOKE/MCALILEY

NICOLAS S. LAURENT, et al.,
plaintiff

vs.
NANCY N. HERKERT TRUSTEE,
et al.,
Defendants
_____/

**THE UNDERSIGNED JUDGE,.** to whom the above - styled case has been assigned, hereby **recuses** herself and refers the case to the clerk of Court for reassignment pursuant to 28 U. S. C. §455 (a) and local rules 3.6.

**DONE AND ORDERED** in Chambers at Miami-Florida, this 8th day of March 2005.

/s/_____
THE Honorable Marcia G. Cooke
United States District Court

In accordance with the Local Rules for the Southern District of Florida providing for the random, and equal allotment of cases, this cases will be reassigned to the calendar of **Joan A. Lenard.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
( Entered on April 15, 2005)
CASE No.: 04-22471-CIV JORDAN

NICOLAS S. LAURENT
AS GUARDIAN FOR
FOUR MINOR CHILDREN
PLAINTIFFS

vs.

NANCY N. HERKERT, TRUSTEE
BANK ATLANTIC FEDERAL
SAVING BANK
JOANNE M. CHIN, VICE PRESIDENT BANK
ATLANTIC FEDERAL SAVING BANK # 810
HUGO A. MARTINEZ
STEPHEN N. ROSENTHAL
ELSA C. MACHADO, PROPERTY TAX COLLECTOR
RACHEL BAUM, FINANCE DIRECTOR
BOARD OF COUNTY COMMISSIONERS,
MIAMI DADE COUNTY
MIAMI-DADE-COUNTY-PROPERTY TAX COLLECTOR
All unknown persons having and / or claiming
All interest in the real property which is the hereof
Defendants

**FIRST AMENDED COMPLAINT FOR DAMAGE**

Plaintiff, NICOLAS S. LAURENT ( hereinafter" NICOLAS S. LAURENT AND SANDRA M. LAURENT ( LAURENT Guardian for the minors property sues the Defendant NANCY N. HERKERT, TRUSTEE, BANK ATLANTIC FEDERAL SAVING BANK JOANNE M. CHIN, VICE PRESIDENT FOR BANK ATLANTIC FEDERAL SAVING BANK #810, HUGO A. MARTINEZ, STEPHEN N. ROSENTHAL ELSA C. MACHADO, PROPERTY TAX COLLECTOR,

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
( Entered on November 10, 2004 )

IN RE: Case No. 00-50881- BKC PGH
NICHOLAS LAURENT
Debtor ( s) CHAPTER 13

**NOTICE OF DEPOSIT OF FUNDS WITH THE U. S. BANKRUPTCY COURT CLERK**

NOTICE IS HEREBY GIVEN THAT:

( XX ) The trustee has a balance of $ 4, 681, 64 remaining in her bank account which represents unrepresented checks drawn and mailed to debtor ( s ) / creditor ( s ) in the above named case. Your trustee has made a good faith effort to verify the correct mailing address for said **debtor** ('s ) Creditor ( s ) and deliver the funds before presenting this notice. More than sufficient time has passed for these checks to be presented for payment.

( ) The trustee has a balance of $ 00 remaining is her bank account which represent small dividends as defined by FRBP 3010.

Attached and made a part of this notice is list pursuant to FRB 3011 of the name, claim numbers and addresses of the debtor ( s ) creditor ( s ) and the amounts to which they are entitled.

**WHEREFORE**, Your trustee hereby gives notice that the above stated sum has been deposited with the clerk of U. S. Bankruptcy Court, Southern District of Florida, to Effect closing of the estate.

Date: 11/ 09/ 04 /s/_____
NANCY N. HERKERT
CHAPTER 13 TRUSTEE

KOPPEN, WATKINS, PATNERS & ASSOCIATES
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

REPLY TO
700 NORTHEAST 90 STREET
MIAMI, FLORIDA 3138-3206
TELEPHONE: ( 305 ) 754-5442
TELEFAX: ( 305) 757-6736

ANNEX
BY APPOINTMENT ONLY
MIAMI - FLORIDA 33138
TELEPHONE:( 305 ) 759-1002

R. Daniel Koppen
Attorney at law

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
ARTICLE NO.: P 283 550 848

October 13, 1993

Mr. Nicolas S. Laurent
1915 N.W. 134 Street
Miami, Florida 33167

In Re: Property located at 13750 N.W. 7th Avenue, Miami, Florida

Dear Mr. Laurent:

The office of the undersigned has been requested by your Title insurance company to assist you in resolving a Title claim that has been made against property, in which you purchased from Mr. Hugo A. Martinez on March 16, 1993. I expect that you will be soon be served with a complaint alleging that a prior owner Mr. Buel Carter sold the property to more than one person.

I do not know all the particulars, but stand ready to assist you, at the expense of the Title Company, once you served. of course, you may first contact your private attorney but if you so elect, kindly provide him with a copy of this letter. In any event, once served, promptly make arrangements to deliver a copy of the complaint to your private counsel, or our office.

Verily truly yours

KOPPEN, WATKINS PATNERS & ASSOCIATE, a professional Association

R. DANIEL KOPPEN.

KOPPEN, WATKINS, PATNERS & ASSOCIATES
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
MIAMI, FLORIDA 3138-3206 MIAMI - FLORIDA 33138

REPLY TO
700 NORTHEAST 90 STREET
TELEPHONE: ( 305 ) 754-5442
TELEFAX: ( 305) 757-6736

ANNEX
BY APPOINTMENT ONLY
TELEPHONE:( 305 ) 759-1002

PHILLIP CALTON III
ATTORNEY AT LAW

December 7, 1995

**Mr. Nicholas S. Laurent**
**13750 N.W. 7th Avenue**
**Miami, Florida 33168**
**In Re: Trial date**
**Pennington vs. Laurent, et al.,**
**Case No: 92-24742 CA 21**

Dear Mr. and Mrs. Laurent

Please be advised that the above style case had been set for trial for a two ( 2 ) week period from January 2, 1996, through January 12 1996. It will be necessary for you and your wife to attend the trial. Please remain on standby for two weeks period. The court will notify us as to the exact date, and time of the trial.

Upon receipt of this letter please **Immediately** contact either Daniel Koppen, Esquire, or the undersigned prior to trial. Your cooperation to this matter is greatly appreciated, since your property rights may be affected by the outcome of the case.

Very truly yours
KOPPEN, WATKINS, PATNERS &
ASSOCIATES, a Professional Association
PHILLIP CARLTON III, ESQUIRE

PC Yii

KOPPEN, WATKINS, PATNERS & ASSOCIATES
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

REPLY TO
700 NORTHEAST 90 STREET
MIAMI, FLORIDA 3138-3206
TELEPHONE: ( 305 ) 754-5442
TELEFAX: ( 305) 757-6736

ANNEX
BY APPOINTMENT ONLY
MIAMI - FLORIDA 33138
TELEPHONE:( 305 ) 759-1002

PHILLIP CALTON III
ATTORNEY AT LAW

February 27, 1996

Mr. Nicholas S. Laurent
1915 N. W. 134th Street
Miami, Florida 33167
In Re: Trial Date / ATTENDANCE AT TRIAL
Pennington v. Laurent, et al.,
**Case No: 92-24742 CA 21**

Dear Mr. Laurent

Please be advise that the above style case has been set for a two ( 2 ) week period from March 25, 1996. It will be necessary for you and your wife to attend the trial. Please remain on standby for said two weeks period. the court will notify us at to the exact date and time of the trial.

Due to the importance of your attendance at trial as a party to the litigation and a necessary witness /
It was necessary to deliver this letter by courier and certified mail to ensure notification of the trial date.

I cannot over stress the importance of your intendance at the trial of this cause. Your property rights may be in jeopardy.

Upon receipt of this letter, Please immediately contact either Daniel Koppen, Esquire or the undersigned so that we can discuss the case and review your testimony prior to the trial. Your cooperation in this matter is greatly appreciated since your property rights may be affected by the outcome of the case.

Very truly yours,

Very truly yours
KOPPEN, WATKINS, PATNERS &
ASSOCIATES, a Professional Association
PHILLIP CARLTON III, ESQUIRE

PC Yii

NATIONS TITLE INSURANCE COMPANY
15770 North Dallas Parkway Suite 1200, LB 45 - Dallas, TX 75248
Phone ( 214 ) 774-2100. Nationwide Ph. ( 800 ) 654- 7041
Fax ( 214 ) 774-0044
Effective September 15, 1996, Our New Area Code is 972

OCTOBER 10, 1996

Mr. and Mrs. Nicholas S. Laurent
1915 NW 134 St
Miami, Fl 33167

RE: Claim File No. 933447

Owner's Policy 096646526 dated March 22, 1993 insuring property described as Lot 15, Block 4 of High view Gardens, Section A, and the North 5'' of Lot 1, Block 4, of 11th Judicial Circuit Court, Dade County, Florida.

Cause No. 92-24742. Richard and Guadalupe Pennington vs. Buel Carter, Jr., Nations Title Insurance of New York et al., 11th Judicial Circuit Court, Dade County Florida.

Dear Mr. and Mrs. Laurent

Enclosed please find the Original Quit claim Deed, which was received by counsel retained on your behalf and has now been recorded in the Official Records, Dade County, Florida. The Quit claim Deed transfers the title from Richard L. Pennington and Guadalupe Pennington to Nicolas S. Laurent.

Nations Title has now fulfilled its responsibility to you under the above Owner's policy. However, you have been uncooperative and have apparently not executed the release that has previously been forwarded to you by R. Daniel Koppen, Esq., the attorney retained on your behalf. Please immediately execute the release before a -

notary, and return it to me. Your assistance is appreciated. After the executed Release from you, the claim file maintained by Nations Title will be closed.

Please contact me if I may be of further Assistance.

Very truly yours

/s/_____

C. Lee Cox
Assistant Vice President
Claim Counsel

CLC/tlt

Enclosure

cc R. Daniel Koppen. Esq.
Koppen, Watkins, Partners & Assoc.
700 Northeast 90th St
Miami, Fl 33138-3206

OFF. 17360 Page 3294, 96R428644 1996 SEP 23 12:21,

THIS INSTRUMENTS WAS PREPARED BY:
R. DANIEL KOPPEN, ESQ
KOPPENS, WATKINS, PATNERS & ASSOCIATES,
A Professional Association
700 N.E. 90th Street
Miami, Florida 33136-3208

DOCS1PDEE. 0 60 SURTX 0. 00
HARVEY RUVIN, CLERK DADE COUNTY, FL

**QUIT CLAIM DEED**

THIS INDENTURE, made this 21 DAY OF JUNE, 1996, BETWEEN, RICHARD L. PENNINTON
and GUADALUPE PENNINGTON, his wife, herein-after referred to as First party, to NICHOLAS LAURENT whose post office address is 1915 N. W. 134th Street, Miami-Florida 33167, and whose Social Security Number is _____, Hereinafter to as second party:

Wheresoever used herein the term "party" shall include the heirs, personal representatives, successor and / or assigns of the respective parties hereto; the use of the singular number shall include the plural, and the plural the singular; the use of any gender shall include the genders; and, if use, the term "notes, the term notes shall include all the notes herein described if more than one.

WITNESSETH, That the said First party, for and in consideration of the sum of $ 10, 00, In hand paid by the said second party, the receipt of which is hereby-

acknowledged, does hereby remise, release, and quit- claim unto the second party forever, all the right, Title, Interest, claim, and demand which the said First party has in and to the following described lot, pieces or parcel of land, situates, lying and being in the County of Dade, States of Florida to wit:

Lot 15, Block 4, of HIGHVIEW GARDENS SECTION "A" according to the Plat thereof recorded in Plat Book 45 at page 29 of the Public Records of Dade County, Florida, AND

The North 5 Feet of Lot 1, Block 4, of HIGHVIEW GARDENS according to the Plat therefore recorded in Plat Book 45 at page 22 of the Public Records of Dade County, Florida.

Folio Number: 30-2123-010-0140

TO HAVE AND TO HOLD the same together with all and singular the appertaining thereunto belonging or in anywise appertaining, and all the estates, right, Title, Interest, lien, equity, and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever.

IN WITNESSES WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered
to the presence of:

/s/_____
Betty S. Mirtleberg

/s/_____
RICHARD L. PENNINGTON
336 N. E 80TH Street
Miami, FL 33138

/s/_____
Betty S. Mirtleberg

/s/_____
GUADALUPE PENNINGTON
336 N. E. 80TH Street
Miami, FL 33138

I HEREBY CERTIFY that before me the undersigned-authority personally appeared RICHARD L. PENNINGTON and wife GUADALUPE PENNINGTON, his wife, who are personally known to me or have produced _____ as identification who did take an oath and acknowledge before me that they executed the foregoing for the purpose therein expressed.

Sworn and subscribed before me this 21 day of June 1996.

/s/_____
NOTARY PUBLIC STATE OF FLORIDA

Print Name CHERO WARREN
Claim # 933447

My Commission Expires: on July 11, 1996.
AFTER RECORDING, RETURN TO:
Fidelity National Title, 15770 Dallas Pkwy., Suite 1200, LB 45, Dallas, TX 75248-3329 Attn. C, Lee Cox

B 10 Official Form 10 Rev. 1292

| | |
|---|---|
| United States Bankruptcy Court<br>Southern District Florida<br>Entered for the court on March 21, 2007 | PROOF OF CLAIM<br>DADE CNTY |
| In re (Name of Debtor )<br>Laurent, Nicholas | Case Number:<br>00-50881 CH 13 |
| Note: This form should not be useful to make for an administrative expense arising after the commencement of the case. A request of payment of an administrative expense may be filed pursuant to 11 U. S. C.§ 503. | |
| Name of Creditor<br>The person or entry to whom the debtor owed money or property.<br>BANK ATLANTIC<br>_____<br>Names and address where Notices should be sent<br>BANK ATLANTIC<br>P.O. Box 5707<br>Ft Lauderdale, Fl 33310<br>Telephone No. (954 ) 760-5517 | { ) Check box if you aware that anyone else has. file the proof of claim relating your claim. Attach copy of statement giving particulars.<br>( ) Check box if you have never received any notices from the bankruptcy Court in this case.<br>( ) Check box if the address differs from the address on the envelope sent to you by the court. |
| ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR<br>Cert # 98-22479 (**Tax Deed APPL)**<br>Parcel Identification # 30-2123 010 0140 | Check here if this claim<br>( [ ]replaces [ ] amends<br>A previously filed claim, dated_____ |

| 1.BASIS FOR CLAIM | |
|---|---|
| { } Goods sold<br>{ } Services performed<br>{ } Money Loaned<br>( ) Personal Injury wrongful death /<br>{ X } Taxes Property<br>Florida Statutes Sec 197- 122<br>{ }Other ( Describe briefly | { } Retiree benefits as defined in 11 U. S. C. §1114 ( a )<br>{ }Wages, salaries, and compensation ( fill out Blow<br>Your social security ____<br>Unpaid compensations for service performed<br>From _____ to____<br>date date |
| 2. DATE DEBT WAS INCURRED<br>January 1997 | 2.IF COURT JUDGMENT, DATE OBTAINED |

Classification of claim, Under the Bankruptcy Code all claims are classified as one of one or more of the following ( 1 ) Unsecured nonpriority, ( 2 ) Unsecured priority, (3 ) Secured, it is possible for part of a claim to be in one category and part in another.

Check the appropriate Box or Boxes that best describe your claim, and state the amount of the claim.

[ X ] Secured claim
$ 7, 776.531 +18% yrly Interest accrues mthly attach evidence (perfection of secured interest.

Brief Description of Collateral:

[X ] Real Estates
[ ] Motor Vehicle
[ ] other describe briefly

This county doesn't provide written documents please check the tax Roll.

Amount of arrearage and other charges included in secured claims above, if any $_____

[ ] Unsecured priority claim $____
Specify the priority of the claim

[ ] Wages, salaries, or commission up to $ 2000 ), earned not of more than 90 days before filing the bankruptcy petition or cessation of the debtor's business, whichever is earlier ) 11 U.S.C. 507 (a) ( 6 )

Contributions to an employee benefit plan-11 U.S.C. 507 ( a)(4]

[ ] Unsecured nonpriority claim $_____

A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.

[ ] Up to $ 900 of deposit to ward purchase, lease, or rental of property or services for personal family or house hold used 11 U.S.C. 507 ( a ) ( 6 )

Taxes or penalties of governmental units 11 07 (a) ( 7 )

[ ] Other 11 U.S.C. 507 (a) (2),( a) ( 5 )( Describe briefly)

TOTAL AMOUNT OF
Claim At Time $_____ $ 15,941.39 for 60 mos. plan
CASE FILED: Unsecured) Secured priority
[ ] Check this box if claim including pre-petition charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.

| $ 15,941.39 for 60 mos. plan |
|---|
| Total |

6. CREDITS AND SETOFFS: The amount of all payment has been credited and dedicated for the purpose of making this proof of claim. In filing the claim, claimant has deducted all the amount that claimant owes to debtor.

7. SUPPORTING DOCUMENTS: Attach a copies of supporting document such as promissory note purchased orders, invoices, itemized statements of running account, contracts, court judgment of evidence of security interest. If the documents are not available explain ( See Box 4 with " ). If the documents are voluminous, attach a summary.

TIME STAMPED COPY: To receives acknowledgement and of the filing of your claims, enclosed a self-addressed envelope and copy of this proof of claim.

| Date | Sign and print the name of Title, If am of the creditors of other person authorized to file this claim ( attach copy of power of attorney if any) |
|---|---|
| 3 / 13 / 01 | /s/_____ Joanne M. Chin Vice President for Bank Atlantic |

Penalty for presenting fraudulent claim: Fines of up to $500, 000, or imprisonment for up to 5 years, or both 18 U.S.C. SS 152 and 3571. ALL PROOF OF CLAIMS ARE SUBJECT TO ADDITIONAL TAX / CHARGES AND INTEREST AS THEY ACCRUE.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

**CLERK'S DEFAULT**

Case No. 04 cv 22471- CIV- JORDAN

Nicolas S. Laurent

Plaintiff ( s )

v.

**Joanne M. Chin**

Defendant ( s )

_____/

It appearing that the defendant ( s ) herein **Joanne M. Chin** is in default for failure to appear, answer or otherwise plead to the First Amended Complaint filed herein within the time required by law. Default is hereby entered against defendant (s) Joanne M. Chin, as of course on this date **August 22, 2005**.

**CLARENCE MADDOX**
CLERK OF COURT

B: /s/_____
Steven C. Kalogerakix
Deputy Clerk

CC: Hon Adalberto Jordan
Nicolas S. Laurent
Jeffrey Wood, William Davell

Feb. 10, 2002
Nicolas S. Laurent
1915 N. W 134 Street
Miami, Florida 33167

Entered on February 19, 2002

In the Circuit Court of the
11th Judicial Circuit
Dade County, Florida

Case # 00-30948 CA01 32

Dear Circuit Court Dade County. Miami Florida:

I'm writing to you this letter regarding the Response to the Summons that I give on Nov. 26, 2001 to the clerk to give to you. After couples of weeks I didn't received your, response, I went personally to see the clerk where I given the response to the Summons to ask why I didn't receive your response.

They told me to wait, from then on I went every weeks, and now I'm sending you again this letter concerning the litigation Hugo A. Martinez attorney Stephen N. Rosenthal. I did mail a copy to Hugo A. Martinez attorney Stephen N. Rosenthal to let him know that I given my response to the court, since I don't receive the response, still from this day, I haven't received any response. I want to know how long it's going to take for me to receive the response from the court, since it has been a couple of months since I have been waiting. Please Judge take this letter into consideration to answer me back. I still have my copy, I be glad to bring back my copy again to the clerk to give to you since I don't know your office.

Sincerely Yours

/s/_____
Nicolas S. Laurent

MIAMI DADE COUNTY FLORIDA
TAX COLLECTION DIVISION
BANRUPTCY UNIT-EMC-
140. W FLAGLER STREET, ROOM 1403
MIAMI, Fl 33130-1575
Telephone ( 305) 375- 5707
Fax ( 305 ) 375-4601

December 4, 2002

VIA FAX NO.TO BANK ATLANTIC ( 954) 760- 5524
& Nancy N. Herkert, Trustee ( 954 ) 443-4452

# 810
BANK ATLANTIC FEDERAL SAVING BANK
JOANN CHIN- TAX CERTIFICATES DEPARTMENT
P.O. BOX 5707
FORT LAUDERDALE, FL 33310-8608
RE: NICHOLAS S. LAURENT, CASE NO. 00-50881-PGH R/E FOLIO: 30-2123-010-0140,
DEMAND FOR RETURN REDEMPTION PAYMENT FOR TAX DEED APPLICATION- TC - 47226 ( 97-22479, 98-21050, & 99-24026 )

Dear Ms. Chin:

By means of this letter, the Tax Collector is requesting the return of the redemption payment issued by our office on May 24, 2002, in the total amount of **$ 10, 115, 34,** for the above referenced Tax Deed application. As we have discussed at length, this property is protected under the Bankruptcy Code, and satisfaction of the Tax Deed Application held by Bank Atlantic was provided for in the confirmed Plans.

The Trustee informed me ( on 11/26/02 ) that the refund check submitted by you would be returned immediately provided you send a letter requesting the return of such funds. Thereafter, the monthly plan payment will continue, in the normal course. To allow the bankruptcy process to continue without disruption, Please remit the redemption

payment at once. Should you want to discuss this matter Further, please call me at ( 305 ) 375- 5707. Thank you so much for your willingness to resolve this matter in an amicable way.

Sincerely,

/s/_____

ELSA C. MACHADO
PARALEGAL COLLECTOR SPECIALIST
E - mail: oem @ miamidade .gov

CC Nancy N. Herkert Standing Chapter 13 Trustee
Nicholas S. Laurent Debtor,

Laurent demand Letter.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
( Entered on December 24, 2002 )
CASE NO: 00-50881 BKC-PGH
CHAPTER 13

IN RE
NICHOLAS LAURENT
SS - 9130

_____/

ORDER DENYING DEBTOR'S MOTION TO MODIFY AND-DEBTOR'S-EMERGENCY-MOTIONFOR CLARIFICATION

THIS CAUSES came on to be heard on December 5, 2002 upon the debtor's Motion to modify plan and Emergency Motion for Clarification and the court having heard the argument of the trustee, and the debtor, and the court being otherwise fully advised in the premises, the court finds.

a ) that there was no overpayment of attorneys fees made in this case.

**b. ) that the Trustee, Bank Atlantic and Miami-Dade County Tax Collector have resolved the issue regarding the pre-payment of the Tax Certificate) and**

c ) that the debtor failed to filed a modified plan in conformance with the bench ruling of the court made on November 7, 2002, and therefore it is

ORDERED AS Follows

1. The motion to modify is denied without prejudice.
2. The emergency motion for Clarification is denied.
3. **The Trustee is authorized to return to Bank Atlantic the sum of $ 4, 356.58, and to continue disbursing funds pursuant to the plan in the normal course.**
4. Bank Atlantic shall return to the Miami-Dade Tax Collector $ 10, 115.34 less the 6.25 redemption fees that Bank Atlantic received from Miami Dade County with -

regard to the unapproved redemption of the tax certificate is this case.

DONE AND ORDERED in the Southern District of Florida this 24th of December, 2002.

/s/
PAUL G. HYMAN
UNITED STATES BANKRUPTCY JUDGE

COPIES FURNISHED TO:

NANCY N. HERKERT
NICHOLAS LAURENT
MIAMI DADE COUNTY TAX COLLECTOR
BANK ATLANTIC

NANCY N. HERKERT, ESQUIRER is direct to mail a conformed copy of this order to creditors and interested parties immediately upon received.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Entered on January 22, 2004.
Proceeding Under Chapter 13

CASE NO.: 00-50881- BKC-PGH

IN RE: NICHOLAS S. LAURENT
Debtor (a)
_____/

NOTICE OF HEARING AND
TRUSTEE'S MOTION TO REDIRECT PAYMENT

YOU ARE HEREBY NOTIFIED that a hearing will be held on February 2, 2004, at 9: 30 a.m. at 299 East Broward Boulevard, Courtroom 308, Ft Lauderdale, Florida 33301.
The trustee's Motion to Redirect Payment as Follows:

The Creditor:
# 810 BANK ATLANTIC, FSB
has returned a disbursement check. and sent to the trustee Correspondence indicating **that they refuse** payment on the account because the account was paid full.

The trustee moves to redirect payment to reflect that Creditor:
# 810 Bank Atlantic FSB

will not receive any further plans payment and that the funds designated for the above named creditors will be distributed pro rata to general unsecured creditor or, if none, to the debtor.
The trustee proposes that all other terms of the confirmed plans remain the same.

I HEREBY CERTIFY that a true and correct copy of -

the foregoing Notice of Hearing and Motion to Redirect payment was mailed Jan 21, 2004, to the parties listed below.

/s/_____

Nancy N. Herkert. Esquire
Standing Chapter 13 Trustee
P.O. Box 279806
Miramar, Fl 33027-9806
Telephone: ( 954 ) 443- 4402
Florida Bar No. 441356

CC. furnished to Jared J. Kullman
Nicolas S. Laurent

(2)

N0: 06 -1344

FILED
JUL 0 3 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

# Supreme Court of the United States

Nicolas S. Laurent
As Guardian for four children
Et, al.,

Petitioners,

v.

Nancy N. Herkert, chapter 13 trustee
Bank Atlantic Federal Saving Bank
Joanne M. Chin, Vice President, for Bank Atlantic
FSB # 810
Hugo A. Martinez
Stephen N. Rosenthal
Rachel Baum, Finance Director
Elsa C. Machado, Property Tax Collector
Board of County Commissioners Miami Dade county
Miami –Dade County Property Tax Collector.

Respondents,

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR ELEVENTH CIRCUIT**

## PETITION FOR REHEARING

NICOLAS S. LAURENT
P. O. BOX 260189
BOSTON, MA 02126
TEL: (617) 894-9774
PRO SE / ATTORNEY

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## INTRODUCTION

Pursuant to Rule 44. 2, Petitioner respectfully petitions this court for Petition for Rehearing, in good faith, not to delay time.
United States Court of Appeals decision on July 14, 2006, to affirmed the District court order, constitute plain error.

Review Court of Appeals Is Necessary To Prevent Defect In the Constitution, because of Conflict between The Court, And United States Department of Justice Office of the Solicitor General, As to whether Respondent is a United States trustee.

## ARGUMENT FOR GRANTING PETITION FOR REHEARING FOR WRIT OF CERTIORARI

REVIEW OF THE COURT OF APPEALS FOR ELEVENTH CIRCUIT DECISION IS NECESSARY AND APPROPRIATE TO RESOLVE A CONFLICT IN THE CIRCUIT COURT AS TO WHETHER RESPONDENT NANCY N. HERKERT IS A UNITED STATES TRUSTEE, AND BECAUSE THIS CASE IS ONE OF NATIONAL IMPORTANCE.

On April 30, 2007, United States Department of Justices office of the Solicitor General, Mr. Paul D. Clement sent a pleading letter Waiver of rights dated April 27, 2007, to Petitioner Laurent and to all parties of interest, in ref. to Nicolas S. Laurent v. Nancy N. Herkert, et, al., S. CT. No: 06-1344, stating Although the court of Appeals styled this case Laurent v. United trustee, Nancy N. Herkert, the United States will not file a response to the Petition for Writ of Certiorari for this case number, since Ms. Nancy N. Herkert is not the United States trustee, instead is the Chapter 13 standing trustee, for the Southern District of Florida, (a private party ), not component of Justice Department.

"The United States trustee did not participate in this case in the Court of Appeals or in the District Court, was not name as a Respondent in the Petition, and has no interest in the outcome of the Petition." For that reasons, the United States will not filed a response to the Petition."

Petitioner, Nicolas S. Laurent Support United States Department of Justice office of the Solicitor General statement made on April 27, 2007, and Petitioner always indicated to the District Court, and court of Appeals in so many occasions, "That Respondent, Nancy N. Herkert,

is a private individual chapter 13, and not component of Justice Department.

United States Department of Justice office of Solicitor General Confirmed the statement made by Petitioner, Nicolas S. Laurent.

Court of Appeals, and the District Court, opinion are in conflict with the law, since Petitioner did not served any Summons, or any complaint to the United States trustee, as a party, neither in the District Court Southern District of Florida, Nor Court of Appeals, for Eleventh Circuit; **and also** Petitioner did not served any Summons or complaint to certain Maritnez, and to certain Steven, since they are not parties in Mr. Laurent First Amended Complaint neither in the District Court Southern District of Florida, nor in the Court of Appeals for Eleventh Circuit.

Court of Appeals for Eleventh Circuit, and District court Southern District of Florida abused its discretion, in the statement made in the Judgment entered against Mr. Nicolas S. Laurent by giving Ms. Nancy N. Herkert, a false Title United States Trustee, and the other Respondents fake name Maritnez, and Steven, in order to dismissed Petitioner's case, and seize petitioner's Guardian home property, for prejudice, since Respondent, Nancy N. Herkert is chapter 13 trustee, (private individual) not United States trustee, and not component of Justice Department.

District Court and Court of Appeals erred by denied Petitioner, Nicolas S. Laurent right to fair trial as acknowledge by the statement made by the U.S. Department of Justice Mr. Paul D. Clement, office of the Solicitor General Letter dated, April 27, 2007.

Petitioner, Nicolas S. Laurent comply in so many occasions to resolved this matter amicable, but they Respondents failed to do so.

Court of Appeals is in conflict with its own rules, by insert the full name of the children, one which is autism in the opinion filed on July 14, 2006, and the judgment made, on October 12, 2006, since Petitioner didn't insert the children's name in the First Amendment Complaint filed in the District Court neither in the Notice of Appeals filed in the Court of Appeals.

11th Cir. 31-6 (b) Name of minor Children, if the involvement of minor children must be used, only the initials of that child should be used.

Petitioner don't owed Ms. Nancy N. Herkert payment, in the chapter 13 bankruptcy court payment plan.

On November 10, 2004, Respondent, Nancy N. Herkert, Chapter 13 trustee filed Notice of Deposits of balance funds, in the U.S. Bankruptcy Court $ 4, 681. 64, out of $ 24, 106. 90, dollars, failed to credit petitioner inside the chapter 13 payment plan, case number: 00-50881-BKC, which is still in the U.S. Court Registry as of today. Now, the remaining balance is $ 19, 425. 26, which Respondent, Nancy N. Herkert failed to credit Petitioner inside the Chapter 13 payment plan.

Chambers v. Goldberg, Inc., 501 U.S. 1276544, 32 FED. R. SEV. 3d ( LCP ) 1263 (3 Cir. Pa 1995 ).

Federal judges have an inherent power to punish parties and attorney in contempt.

Respondents failed to answer Petitioner statement in the Petition for Writ of Certiorari regarding Hugo A. Martinez 's foreclosure on May 24, 2002, and second foreclosure made on November 13, 2002 with the Guardian home property taxes, Mr. Laurent already paid inside the Chapter 13 payment plan, both foreclosures-

Cancelled in the State Court, Eleventh Judicial Circuit recorded on Harvey Ruvin Clerk of Court Book # 22494, at pages 0146, Dade County West Flagler Miami, Florida.

Borg Warner Acceptance Corp. V. Hall 685 F. 2d 1306 ( 11th Cir. 1982).

Petitioner, Nicolas S. Laurent object orally to Mr. Stephen N. Rosenthal, and his client Hugo A. Martinez false representation mortgage claim, in the court.

Mr. Hugo A. Martinez relief, in the chapter 13 bankruptcy court is irrelevant, since it was obtained in perjury, fraud, and bad faith.

That is one of the reason Respondents, Stephen N. Rosenthal, Hugo A. Martinez, Bank Atlantic FSB # 810, Joanne M. Chin, Elsa C. Machado, Rachel Baum, including Ms. Nancy N. Herkert, Miami Dade County property tax Collector, Board of Commissioners Miami-Dade County, all waived their rights to respond to Petitioner in this case number: 06- 1344, since they recognized they are in default, and doesn't have any factual evidence; and Respondents know that the Guardian home property belong to Petitioner Laurent, and the children hundred percent.

The Bankruptcy Court judge erred in executed a wrongful secret relief in rem judgment from Stay, on October 5, 2001, to Stephen N. Rosenthal, attorney for Mr. Martinez, without Service of process to Mr. Laurent, and without Statement of Verification, and investigation, to verify where Hugo A. Martinez has any interest or mortgage in the Guardian home property, after June 21, 1996. In re Sonnax Indus Inc., 907 F. 2d 1280, 1285, 2d Cir. 1990 ) Secret Rem judgment, in the bankruptcy court, doesn't applied to Petitioner, Nicolas S. Laurent, because Mr. Stephen N. Rosenthal, and the Court

doesn't have any valid document to justify, where Hugo A. Martinez obtain mortgage, interest, or claim, in the property, after **June 21, 1996,** when Fidelity National Title Insurance paid money settlement, on behalf of Mr. Laurent to transfer the Title of the property from Real owner Richard L. Pennington, and wife Guadalupe, First party to Nicolas S. Laurent, Second Party forever, in the Eleventh Judicial Circuit Court, Dade County, Miami- Florida, case # 92-24742 CIV (21). Remark Industries v. La. 973 F. 2d 1124 ( 3d Cir. 1992). Supremacy Clause of the U.S. which provide that the law of the United States Constitution are Supreme law of the land no withstand any state law.

Petitioner, Nicolas S. Laurent comply and prosecuted in the State Court, Eleventh Judicial Circuit Court, Dade County, Miami-Florida, and no default being entered against Mr. Nicolas S. Laurent.

Petitioner, Nicolas S. Laurent filed answer on November 26, 2001, to the Summon, in state Court, Eleventh Judicial Circuit , and sent a copy to Hugo A. Martinez's attorney Stephen N. Rosenthal.

Hugo A. Martinez's attorney Stephen N. Rosenthal failed to reply to Mr. Laurent response to the Summons, and thereafter Petitioner went to filed a second pleading on February 19, 2002, in the Eleventh Judicial Circuit Court, indicated that Mr. Laurent never received any reply, neither from the Court, nor Mr. Stephen N. Rosenthal. Petitioner never received any service of process for the Summary

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[1]The Bankruptcy Court has authority to punish an attorney for bad faith, in Fellheimer, Eichen Braverman v. Charter Technologies57 f. 3 D 1215, BANKER. L. REP (CCH) 76544, 32 FED, R, SER v. 3D ( LCP ) 1263 ( 3d CIR. PA 1995.

Judgment, neither from the Eleventh Judicial Circuit Court, nor from Mr. Stephen N. Rosenthal.

Unexpectedly, on or about May 9, 2002, to May 12, 2002, an attorney contacted petitioner to indicated the is a foreclosure action in Petitioner's Guardian home property. Subsequently, on May 13, 2002, Nicolas S. Laurent filed Motion to dismissed foreclosure, without prejudice, in the Eleventh Judicial Circuit Court, indicated that Mr. Laurent never received any response for the answer filed on November 26, 2001, and for the pleading filed on February 19, 2002, neither from the court, nor from Hugo A. Martinez's attorney Stephen N. Rosenthal.

On May 23, 2002, attorney Steven B. Feren filed Emergency Motion, on behalf of Petitioner Laurent to Judge Leslie Rothenberg, in the state court, Eleventh Judicial Circuit, indicated that his going to have surgery, on May 24, 2002, that he will not be able to appeared in court, on behalf of Mr. Laurent and wife, and " Petitioner has a Responsive pleading filed and docket by the clerk of court, on February 19, 2002, and never receives a Notice of Hearing for the Motion for Summary Judgment, and to halted the foreclosure action, until this matter can be straightened out.

Judge Leslie Rothenberg, disregard attorney Feren letter, proceed with the foreclosure action, which Petitioner object on May 31, 2002.

On June 6, 2002, Attorney Steven B. Feren withdrew from Mr. Laurent case, since he needed more time to recuperated from the surgery.

Mr. Stephen N. Rosenthal should not represent Mr. Hugo A. Martinez in the bankruptcy court, 2001-State court, Eleventh Judicial Circuit, and the District Court, Case Number: 04- CV- 22471, since attorney Stephen N.

Rosenthal has a conflict of interest insert his name as percentage in Petitioner, Nicolas S. Laurent's Guardian home property, Dade County, Miami-Florida, Folio number: 30 -2123 010 0140, without writ of Possession, in the State Court, Eleventh Judicial Circuit.

"An attorney cannot represented a client in the same case, and the same matter, five times in different court. Bryson 131 f. 3D 601, 38 Collier Bank, CAS 2d (MB) 1673 FED. R. SERV. D. (LCP) 1524 (7TH CIR. 1997.

The bankruptcy court have an authority under rule §105, to sanction an attorney who has acted unreasonably and vexatious. "

Mr. Stephen N. Rosenthal represent Hugo A. Martinez, for the same case, same matter, five times in different court. The general rules is that a conflict of interest requires disbarred of attorney Stephen N. Rosenthal false representation claim, in the bankruptcy court.

In People v. Lepe 211 Cal Rptr. 432,434 (Cal App, 1985). The District attorney had formerly represented a party in two cases, the court held that the District attorney must be recuses, and his position requires disqualification of his entire office. This case demonstrates the integrity of the judicial system, and proper respect for a fair trial, and the right to due process.

Bank Atlantic FSB # 810, Joanne M. Chin signed contract with Petitioner, Nicolas S. Laurent to received payment for the Guardian home property taxes certificates, inside the Bankruptcy Chapter 13 payment plan, for 5 years terms of the payment plan, which was confirmed, and approved by all parties.

Thereafter on November 13, 2002, creditor Bank Atlantic FSB # 810, Nancy N. Herkert, chapter 13 trustee decide to used Petitioner's Guardian home property taxes certificates, to made a second deception foreclosures,

without relief from the Automatic Stay, when petitioner chapter 13 payment plan was fully active, and effect. In Crysen / Montenay Energy Co. v. Esselen Assoc., Inc., ( In re Crysen / Montenay Energy Co.), 902 f.2d 1098 ( 2d Cir 1990). Overby v. Overby, 457 S. W 2d 756, 758 (1987)In re Taylor, 854 F. 2d 478, 483 (9th Cir. 1989)In re Soares v. Brockton Credit Union ( In re Soares), 107 F. 3d 969 (1st Cir. 1997) Steel Co. v. Citizen For Better Environment. Sunshine Development Inc, vs. Federal Deposit Insurance Corp. 33 F. 3d 106 (1 St Cir. 1994). Saint Louis v. Hughes, 50 S. W 2d 8 50 (M O. Banc. 1997.

## CONCLUSION

In light of the circuits' profound disagreement with Department of Justice regarding the scope of title of Ms. Nancy N. Herkert, and the significant impact **in the Federal Judiciary system, there is an urgent need for this court to grant review and clarify this conflict.**

For the foregoing reasons, as well as those stated in the Petition for Rehearing, Petitioner Respectfully request the Supreme Court of the United States to reconsider and grant Petitioner's Petition for Rehearing for Writ of Certiorari.

I, Nicolas S. Laurent do solemnly swear that the above statement is true and complete to the best of my knowledge.

The petition for writ of Certiorari should be granted.

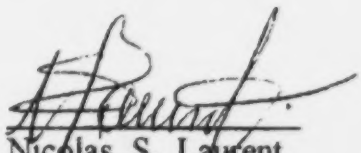
Respectfully, Submitted

Nicolas S. Laurent
P.O. Box 260189
Boston, MA 02126
Tel: ( 617) 894-9774
Pro Se / attorney

Dated June 18, 2007

## CERTIFICATE OF GOOD FAITH

As Petitioner, Nicolas S. Laurent, I believe this petition for Rehearing to be meritorious and hereby certify that this petition is presented in good faith, and not for purpose of delay.



Nicolas S. Laurent
P.O. Box 260189
Boston, MA 02126
Tel: ( 617) 894-9774
Pro Se / attorney

Dated June 18, 2007